

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

IN THE MATTER OF APPLICATION 52772)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE ALKALI SPRINGS VALLEY)
HYDROGRAPHIC BASIN (142), ESMERALDA)
COUNTY, NEVADA.)

RULING

5383

GENERAL

I.

Application 52772 was filed on December 12, 1988, by Colvin Cattle Co., Inc., to appropriate 1.0 cubic feet per second of water from an underground source for stockwatering purposes within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T.1S., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 18.¹

II.

On February 6, 1996, the State Engineer's office received a letter from the U.S. Department of the Interior, Bureau of Land Management (BLM) stating that the applicant's grazing lease for the Montezuma Allotment, which contains the subject place of use and point of diversion, had expired on February 28, 1995, and any livestock grazing within said allotment was unauthorized.¹

III.

On or about December 30, 1997, Colvin Cattle Company filed its notice of appeal to the Interior Board of Land Appeals (IBLA), appealing the decision of the BLM to cancel its grazing permit and remove livestock owned by Colvin Cattle Company from the Montezuma Allotment.

IV.

On April 1, 1999 the State Engineer issued Ruling No. 4723 denying Application 52772 on the grounds that to approve an application for stockwatering use on a source

¹ File No. 52772, official records in the Office of the State Engineer.

where the applicant cannot demonstrate the ability to place the water to beneficial use would threaten to prove detrimental to the public interest.²

V.

Colvin Cattle Company petitioned the Fifth Judicial District Court of the State of Nevada to review the State Engineer's Ruling No. 4723. On June 30, 2001, the State Engineer and Colvin Cattle Company entered into a stipulation whereas the State Engineer would rescind Ruling No. 4723 and would not issue a ruling with respect to Application 52772 until there is a final judicial determination of the IBLA appeal of Colvin Cattle Company and Colvin Cattle Company, Inc.³

VI.

On November 5, 2001, the Fifth Judicial District Court issued an order pursuant to the stipulation entered.⁴

VII.

On October 28, 2003, the IBLA issued a final decision Order N6-97-04 affirming the BLM's cancellation of Colvin Cattle Company's grazing permit on the Montezuma Allotment.⁵

FINDINGS OF FACT

I.

Application 52772 was filed to appropriate water from an underground source located in the SW¹/₄ SW¹/₄ of Section 18, T.1S., R.43E., M.D.B.&M. The State Engineer finds that a determination was made through IBLA Order N6-97-04 affirming the BLM's cancellation of Colvin Cattle Company's grazing permit on the Montezuma Allotment.

II.

Nevada Revised Statute § 533.503 provides that the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless the applicant for the permit is legally entitled to place livestock on the lands for which the permit is sought and:

- (1) Owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought; or

² Ruling No. 4723, official records in the Office of the State Engineer.

³ Case No. 4869, Fifth Judicial District Court of the State of Nevada.

⁴ Order dated November 5, 2001, official records in the Office of the State Engineer.

⁵ Copy of IBLA Order N6-97-04 entered into File No. 52772, official records of the Office of the State Engineer.

- (2) Has received from a person described in subparagraph (1), authorization to have physical custody of the livestock on or to be placed on the lands for which the permit is sought, and authorization to care for, control and maintain such livestock;
- (b) The forage serving the beneficial use of the water to be appropriated is not encumbered by an adjudicated grazing preference recognized pursuant to law for the benefit of a person other than the applicant for the permit; and
- (c) The lack of encumbrance required by paragraph (b) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit that is issued by the appropriate governmental entity to the applicant for the permit.⁶

The BLM informed the State Engineer on February 27, 2004,⁷ that the point of diversion and place of use is within the Montezuma Allotment and the permittee is Bud Johns authorized under a temporary non-renewable lease. The State Engineer finds that the applicant is not legally entitled to place livestock upon the public lands compromising the point of diversion and place of use under Application 52772. The State Engineer finds to approve a permit for stockwatering when the applicant is not authorized to use the lands for grazing would threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁹

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

⁶ NRS § 533.503.

⁷ Memo dated May 19, 2004, entered into File No. 52772, official records of the Office of the State Engineer.

⁸ NRS chapters 533 and 534.

⁹ NRS § 533.370 (4).

III.

The State Engineer concludes that the applicant is not the current range user for the allotment containing the water source; therefore, the approval of Application 52772 would threaten to prove detrimental to the public interest.

RULING

Application 52772 is hereby denied on the grounds that to approve an application for stockwatering purposes where the applicant is not the authorized range user would threaten to prove detrimental to the public interest.

Respectfully submitted,



Hugh Ricci, P.E.
State Engineer

HR/TH/jm

Dated this 17th day of

June, 2004.