

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

IN THE MATTER OF APPLICATION 54267)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF UPPER ELLENDALE SPRING)
WITHIN THE STONE CABIN VALLEY)
HYDROGRAPHIC BASIN (149), NYE)
COUNTY, NEVADA.)

RULING

#5486

GENERAL

I.

Application 54267 was filed on December 22, 1989, by E. Wayne and Jean N. Hage to appropriate 0.031 cubic feet per second of water from Upper Ellendale Spring for stockwatering purposes within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 24, T.3N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 24, T.3N., R.46E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Application 54267 was filed to appropriate surface water on lands administrated by the Bureau of Land Management (BLM). The State Engineer finds that a determination was made through an examination of the records in the Office of the State Engineer that with the exception of Application 54267, there are no additional permitted, vested or reserved water right filings appurtenant to this spring.

II.

Nevada Revised Statute § 533.503 provides, in part, that; the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless:

- (a) The applicant for the permit is legally entitled to place the 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

¹ File No. 54267, official records in 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.

The BLM informed the State Engineer on February 1, 2005, that the point of diversion and place of use is within the Ralston Allotment and the Hages do not have a permit to run livestock on public land in the Ralston Allotment. The State Engineer finds that the applicant is not legally entitled to place livestock upon the federal lands compromising the point of diversion and place of use under Application 54267. 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.²

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³

- 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 or change threatens to prove detrimental to the public interest.

² NRS chapter 533.

³ 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 54267 would threaten to prove detrimental to the public interest.

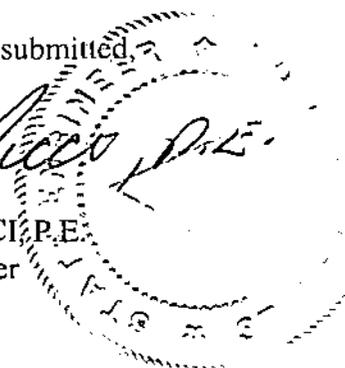
RULING

Application 54267 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/WHR/jm

Dated this 2nd day of

June, 2005.