

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

IN THE MATTER OF APPLICATIONS)
42202, 42203, 42324 AND 42325 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
SPRING VALLEY HYDROGRAPHIC BASIN,)
(184) WHITE PINE COUNTY, NEVADA.)

RULING

4984

GENERAL

I.

Application 42202 was filed on August 27, 1980, by Nanette Kibbe Elliott to appropriate 5.4 cubic feet per second of underground water for irrigation and domestic purposes within 320 acres of land located within the S1/2 of Section 8, T.13N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SW¼ of said Section 8.¹

II.

Application 42203 was filed on August 27, 1980, by Nanette Kibbe Elliott to appropriate 5.4 cubic feet per second of underground water for irrigation and domestic purposes within 320 acres of land located within the S1/2 of Section 8, T.13N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of said Section 8.²

III.

Application 42324 was filed on August 28, 1980, by Michael G. Schroeder to appropriate 5.4 cubic feet per second of underground water for irrigation and domestic purposes within 320 acres of land located within the W¼ of Section 19, T.11N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SW¼ of said Section 19.³

¹ File Number 42202, official records in the office of the State Engineer.

² File Number 42203, official records in the office of the State Engineer.

³ File Number 42324, official records in the office of the State Engineer.

IV.

Application 42325 was filed on August 28, 1980 by Michael G. Schroeder to appropriate 5.4 cubic feet per second of underground water for irrigation and domestic purposes within 320 acres of land located within the W1/2 of Section 19, T.11N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SW1/4 NW1/4 of said Section 19.⁴

V.

Application 42202 was timely protested by White Pine County on the following grounds:

The granting of additional applications to appropriate the limited groundwater in White Pine County for Desert Land Entries will be detrimental to the public interest and economic welfare of White Pine County.¹

FINDINGS OF FACT

I.

Applications 42202, 42203, 42324 and 42325 were filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of Desert Land Entry applications. By letter dated May 23, 2000, the United States Department of the Interior, Bureau of Land Management (BLM) was requested to provide the office of the State Engineer with information regarding the status of the Nanette Kibbe Elliott and Michael G. Schroeder Desert Land Entry applications. A timely response from the BLM was received which indicated that the Desert Land Entry applications underlying the subject water right applications had been rejected by the BLM as being unsuitable for agricultural entry. The State Engineer finds that the place of use under Applications 42202, 42203, 42324 and 42325 cannot be acquired by the applicants through the approval of their respective Desert Land Entry applications; therefore, said land remains under federal jurisdiction.

¹File Number 42325, official records in the office of the State Engineer.

II.

A water right application is filed to appropriate water for a specific purpose, which in the case of the subject applications is for the irrigation of land that was to be removed from federal control and transferred to the respective applicants through the filing and approval of their individual Desert Land Entry applications. The State Engineer finds that the BLM's rejection of the Desert Land Entry applications associated with Applications 42202, 42203, 42324 and 42325 removes the purpose for which these applications were filed.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

Applications 42202, 42203, 42324 and 42325 request appropriation of water for projects that do not exist. The State Engineer concludes that to approve permits where the need to appropriate water has ceased would threaten to prove detrimental to the public interest.

⁵NRS chapters 533 and 534.

⁶NRS § 533.370(3).

RULING

Applications 42202, 42203; 42324 and 42325 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest to Application 42202.

Respectfully submitted,


HUGH RICCI, P.E.

State Engineer

HR/MDB/cl

Dated this 7th day of
November, 2000.