

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

IN THE MATTER OF APPLICATION 54268)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF LOWER ELLENDALE SPRING)
WITHIN THE STONE CABIN VALLEY)
HYDROGRAPHIC BASIN (149), NYE)
COUNTY, NEVADA.)

RULING

5578

GENERAL

I.

Application 54268 was filed on December 22, 1989, by E. Wayne and Jean N. Hage, to appropriate 0.031 cubic feet per second (cfs) of water from Lower Ellendale Spring for stockwatering purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 24, T.3N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 24, T.3N., R.46E., M.D.B.&M.¹

II.

Application 54268 was timely protested on March 30, 1990, by the Bureau of Land Management (BLM) claiming that the Lower Ellendale Spring meets the qualifications for a Public Water Reserve as defined in Executive Order 107.¹

FINDINGS OF FACT

I.

Application 54268 was filed to appropriate surface water from Lower Ellendale Spring located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.3N., R.46E., M.D.B.&M. on public lands administrated by the 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 54268, there are no additional permitted, vested or reserved water right filings appurtenant to this spring.

¹ File No. 54268, official records in the Office of the State Engineer.

II.

The 2003 revision of the Nevada Revised Statutes amended NRS § 533.503 to provide, in part, that:

1. 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
 - (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 gazing permit, that is issued by the appropriate governmental entity to the applicant for the permit.²

The BLM informed the State Engineer by letter dated February 17, 2005, that the point of diversion and place of use is within the Tonopah Planning Area and the Hages do not have a permit to run livestock on public land under the Tonopah Resource Management Plan. 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 54268. The State Engineer finds to approve a permit for stockwatering when the applicant is not authorized to use the public lands for grazing would threaten to prove detrimental to the public interest.

² NRS § 533.503.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- 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.

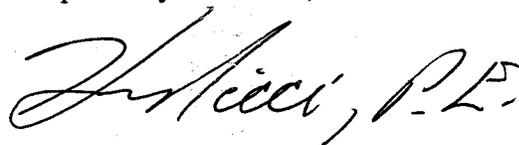
III.

The State Engineer concludes that the applicant is not the current authorized range user for the allotment containing the water source; therefore, the approval of Application 54268 would threaten to prove detrimental to the public interest.

RULING

Application 54268 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. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/WHR/jm

Dated this 10th day of

March, 2006.

³ NRS chapter 533.

⁴ NRS § 533.370(4).