

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

IN THE MATTER OF APPLICATIONS)
45975, 45976, 54269 AND 54270)
FILED TO APPROPRIATE PUBLIC WATERS)
FROM SURFACE WATER SOURCES WITHIN)
THE RALSTON VALLEY HYDROGRAPHIC)
BASIN (141), NYE COUNTY, NEVADA.)

RULING

5590

GENERAL

I.

Application 45975 was filed on July 23, 1982, by E. Wayne and Jean N. Hage to appropriate 0.031 cubic feet per second (cfs) of water from Indian Spring for stockwatering purposes within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T.7N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 6.¹

II.

Application 45976 was filed on July 23, 1982, by E. Wayne and Jean N. Hage to appropriate 0.031 cfs of water from Fitzpatrick Spring for stockwatering purposes within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T.7N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 6.²

III.

Application 54269 was filed on December 22, 1989, by E. Wayne and Jean N. Hage to appropriate 0.031 cfs of water from Jean Spring for stockwatering purposes within the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 32, T.4N., R.45E., M.D.B.&M. The proposed point of

¹ File No. 45975, official records in the Office of the State Engineer.

² File No. 45976, official records in the Office of the State Engineer.

diversion is described as being located within the NE¼ NE¼ of Section 32, T.4N., R.45E., M.D.B.&M.³

IV.

Application 54270 was filed on December 22, 1989, by E. Wayne and Jean N. Hage to appropriate 0.031 cfs of water from Hage Spring for stockwatering purposes within the N½ NE¼ of Section 30, T.4N., R.45E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 30, T.4N., R.45E., M.D.B.&M.⁴

V.

Applications 45975 and 45976 were timely protested by the United States Forest Service on the following grounds:^{1,2}

1. The proposed point of diversion is on National Forest land which the applicant does not control by lease, rent or ownership.
2. The source is a spring that has been continuously used to water livestock and wildlife since prior to 1880, which constitutes a vested right of the Forest Service for livestock watering purposes. This application would adversely affect the Forest Service vested right.
3. The applicant would not be able to develop or put the water to beneficial use without Forest Service approval, which would only be granted under certain circumstances.

VI.

Applications 54269 and 54270 were timely protested by the United States Forest Service on the following grounds:^{3,4}

1. The water source is on land administered by the Toiyabe National Forest which has been in continuous ownership of the United States since 1847. The applicant does not control this land by lease, rent, or ownership.
2. The water source has been continuously used to water livestock since prior to 1905, initially by

³ File No. 54269, official records in the Office of the State Engineer.

⁴ File No. 54270, official records in the Office of the State Engineer.

trespassers on the public domain and subsequently by Forest Service permittees. This continuous use of water on land owned by the United States since prior to 1905 constitutes a vested right by the United States of America-Forest Service for livestock watering purposes. The application would adversely affect this vested right.

3. The applicant would not be able to develop or put the water to beneficial use without Forest Service approval, which would only be granted under certain circumstances.

FINDINGS OF FACT

I.

Applications 45975, 45976, 54269, and 54270 were filed to appropriate surface water on public lands administered by the United States Forest Service (USFS). The State Engineer finds that a determination was made through an examination of the records in the Office of the State Engineer that the USFS has made application for vested water rights on springs proximal to said applications, i.e.; V-04005-Fitzpatrick Spring NE¼ SE¼ of Section 6, T.7N., R.44E., M.D.B.&M.,⁵ V-04006-Indian Spring SE¼ NE¼ of Section 6, T.7N., R.44E., M.D.B.&M.,⁶ V-05125-Spring NE¼ NE¼ of Section 30, T.4N., R.45E., M.D.B.&M.,⁷ V-05126-Spring NE¼ NE¼ of Section 32, T.4N., R.45E., M.D.B.&M.⁸ The State Engineer finds there are no other permitted, vested, or reserved water rights on the proposed sources.

II.

Nevada Revised Statute § 533.503 provides, in part, that:

1. The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless:

⁵ File No. V-04005, official records in the Office of the State Engineer.

⁶ File No. V-04006, official records in the Office of the State Engineer.

⁷ File No. V-05125, official records in the Office of the State Engineer.

⁸ File No. V-05126, official records in the Office of the State Engineer.

- (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.⁹

The USFS informed the State Engineer by letter, on April 14, 2005, that E. Wayne and Jean N. Hage do not have a permit or lease to run livestock on public land on any allotment in the Humboldt-Toiyabe National Forest. The State Engineer finds that the applicant is not authorized to place livestock upon the public lands compromising the point of diversion and place of use under Applications 45975, 45976, 54269, and 54270.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁰

⁹ NRS § 533.503.

¹⁰ NRS chapter 533.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹¹

- 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.

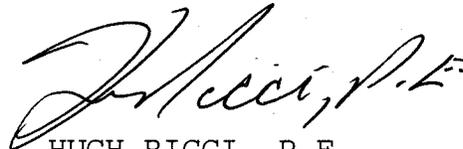
III.

The State Engineer concludes that the applicant does not have a valid grazing permit in the Humboldt-Toiyabe National Forest; therefore, the approval of Applications 45975, 45976, 54269, and 54270 would violate Nevada Revised Statute § 533.503.

RULING

Applications 45975, 45976, 54269, and 54270 are hereby denied on the grounds that their approval would violate Nevada Revised Statute § 533.503. No ruling is made on the merits of the protests.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/WHR/jm

Dated this 14th day of
March, 2006.

¹¹ NRS § 533.370(4).