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

IN THE MATTER OF APPLICATIONS 52159 )  
AND 52167 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF A SURFACE WATER )  
SOURCE WITHIN THE STONE CABIN )  
VALLEY HYDROGRAPHIC BASIN (149), AND )  
APPLICATIONS 52165 AND 52166 FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF A )  
SURFACE WATER SOURCE WITHIN THE HOT )  
CREEK HYDROGRAPHIC BASIN (156), NYE )  
COUNTY, NEVADA. )

RULING

# 5192

GENERAL

I.

Application 52159 was filed on May 27, 1988, by Joe B. Fallini, Jr., Helen L. Fallini and Susan L. Fallini to appropriate 0.032 cubic feet per second (cfs) of water from Bellehelen Lake No. 2 for stockwatering purposes within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 23, T.2N., R.49E., 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 23.<sup>1</sup>

II.

Application 52165 was filed on May 27, 1988, by Joe B. Fallini, Jr., Helen L. Fallini and Susan L. Fallini to appropriate 0.032 cfs of water from Upper Lead Spring for stockwatering purposes within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 25, T.6N., R.49E., 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 25.<sup>2</sup>

III.

Application 52166 was filed on May 27, 1988, by Joe B. Fallini, Jr., Helen L. Fallini and Susan L. Fallini to appropriate 0.032 cfs of water from Lead Spring for stockwatering purposes within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 36, T.6N., R.49E., M.D.B.&M.

<sup>1</sup> File No. 52159, official records in the Office of the State Engineer.

<sup>2</sup> File No. 52165, official records in the Office of the State Engineer.

The proposed point of diversion is described as being located within the NW¼ SW¼ of said Section 36.<sup>3</sup>

IV.

Application 52167 was filed on May 27, 1988, by Joe B. Fallini, Jr., Helen L. Fallini and Susan L. Fallini to appropriate 0.032 cfs of water from Kiln Spring for stockwatering purposes within the SW¼ SW¼ of Section 35, T.6N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SW¼ of said Section 35.<sup>4</sup>

FINDINGS OF FACT

I.

By a letter dated June 9, 1988, the State Engineer's Office requested information from the BLM regarding the current range users within the place of use described under Applications 52143 through 52167. By a letter from BLM dated February 1, 1991, the State Engineer's Office was advised that the owners of Applications 52143 through 52167 were the permitted range user for the place of use described in the applications, except for Applications 52158, 52159, 52165, 52166 and 52167.<sup>1</sup> The State Engineer finds the applicants were not identified as the authorized range user under application 52159, 52165, 52166 and 52167.

II.

By a letter dated May 7, 2002, the State Engineer's Office requested the U.S. Bureau of Land Management for an update regarding the current range users within the place of use described under Applications 45379, 45381, 52158, 52159, 52164, 52165, 52166 and 52167. By a letter from BLM dated September 16, 2002, the State Engineer's Office was advised that the owners of the above listed applications are also the permitted range user for the place of use described therein, except for Applications 52159, 52165, 52166 and 52167.<sup>1</sup>

<sup>3</sup> File No. 52166, official records in the Office of the State Engineer.  
<sup>4</sup> File No. 52167, official records in the Office of the State Engineer.

Nevada Revised Statute § 533.503 provides that the State Engineer shall not issue a permit unless the applicant for the permit is legally entitled to place the livestock on the public lands for which the permit is sought. The State Engineer finds that the applicants are not legally entitled to place livestock on the public lands for which the permits are sought.

### CONCLUSIONS

#### I.

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

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>7</sup>

- 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.

Under the provisions of NRS § 533.503, the State Engineer cannot approve applications filed to appropriate water for stockwatering purposes upon public lands unless the applicant is legally entitled to place the livestock on the public lands applied for under the application. Information supplied by the proper federal regulatory agency indicates that Joe B. Fallini, Jr., Helen L. Fallini and Susan L. Fallini are not permitted to graze livestock upon the lands described within the place of use of the subject applications. The State Engineer concludes that it would threaten to prove detrimental to the public interest to approve applications to appropriate water for stockwatering purposes upon public lands to an applicant who is not the current federal range user.

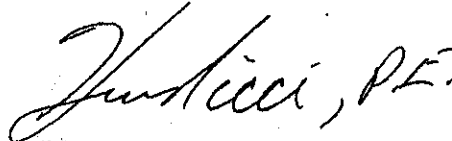
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<sup>5</sup> NRS chapter 533.

RULING

Applications 52159, 52165, 52166 and 52167 are 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/RD/jm

Dated this 12th day of  
December, 2002.