

IN THE OFFICE OF STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION 54211)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE DIXIE CREEK-TEN MILE)
CREEK AREA GROUNDWATER BASIN (048))
ELKO COUNTY, NEVADA.)

RULING

4850

GENERAL

I.

Application 54211 was filed on December 5, 1989, by the Elko Blacksmith Shop, Inc., to appropriate 0.01 cubic foot per second of water from an underground source for the stock watering of 350 head of cattle within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.30N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 12.¹

II.

Application 54211 was timely protested by the United States Department of Interior, Bureau of Land Management (BLM) on the following grounds.¹

1. The waters from this underground source are required for multiple use management of the vacant public lands which are adjacent to, adjoining, and overlying the water source.
2. The Bureau of Land Management has either constructed the development or cooperated in the construction of the development.

FINDINGS OF FACT

I.

Under the provisions of NRS § 533.503, the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock upon the public lands unless the applicant for

¹ File No. 54211, official records in the office of the State Engineer.

the permit is legally entitled to place livestock on the public lands for which the permit is sought.²

By letter dated December 8, 1989, the BLM was requested to provide the office of the State Engineer with information regarding the current range permittee for the place of use described under the subject application. A timely response was received from the BLM which indicated that the Elko Blacksmith Shop, Inc., was permitted to place 350 head of cattle upon the federal range containing the subject place of use.¹ The State Engineer finds that the applicant is legally entitled by the proper federal agency to place livestock upon the place of use described under Application 54211.

II.

Application 54211 was filed to appropriate underground water from an existing well which is located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.30N., R.54E., M.D.B.&M.¹ The State Engineer finds a determination was made through an examination of the records of the office of the State Engineer that, with the exception of Application 54211, there are no additional permitted, vested or reserved water rights appurtenant to this point of diversion.

III.

Before the State Engineer can issue a permit to appropriate water for stockwatering purposes, the applicant must be legally entitled to place livestock upon the federal range allotment that contains the proposed place of use. Application 54211 was protested by the BLM partly on the grounds that it participated in the development and construction of the proposed works of diversion. While the BLM may claim a joint or total ownership of the works of diversion, it does not maintain a livestock operation within the proposed place of use and has no need to divert water from the subject well for stockwatering purposes. The State Engineer has previously denied applications filed by the BLM that

² NRS § 533.503(1).

requested new appropriations of water for stockwatering purposes, therefore, the State Engineer finds that only the applicant can make a beneficial use of the stockwater derived from the proposed works of diversion.³

IV.

Application 54211 was protested by the BLM on the grounds that its approval would jeopardize its ability to manage the public lands under multiple use guidelines. The State Engineer finds that the granting of an application that requests a modest appropriation of underground water for stockwatering purposes will not monopolize the ground water resources of the Dixie Creek-Ten Mile Creek Area Groundwater Basin to a point which would impair future multiple uses of it's water.

V.

Although, the State Engineer has denied applications that requested new appropriations of underground water from the Dixie Creek-Ten Mile Creek Area Groundwater Basin on the grounds that their approval would conflict with existing water rights, the appropriation of a modest amount of water for a sporadic use by livestock as proposed under Application 54211 differentiates it from the larger non-stock uses requested under previously denied applications.⁴ The State Engineer finds that the approval of Application 54211 would not conflict with existing water rights that appropriate water from the Dixie Creek-Ten Mile Creek Area Groundwater Basin.

CONCLUSIONS

I.

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

³ File Nos. 59103, 59354, 60453, 60476, 60477, and 60478, official records in the office of the State Engineer.

⁴ See State Engineer's Rulings 2964, 3187, and 4121, official records in the office of the State Engineer.

⁵ NRS Chapters 533 and 534.

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.

Application 54211, if approved, would allow the current range permittee to appropriate underground water for stockwatering purposes upon the federal range. The State Engineer concludes that the applicant has met the criteria established under NRS § 533.503 and the approval of Application 54211 would not threaten to prove detrimental to the public interest.

IV.

The approval of Application 54211 would allow the permitted federal range user to appropriate an additional 7.24 acre-feet per year from the Dixie Creek-Ten Mile Creek Area Groundwater Basin. The State Engineer concludes that this occasional use of a small amount of underground water will not impair the protestant's ability to manage the public lands under multiple use guidelines or conflict with existing rights.

⁶ NRS § 533.370(3).

RULING

The BLM's protest to Application 54211 is hereby overruled and Application 54211 is approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 10th day of
February, 2000.