

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

IN THE MATTER OF APPLICATION 56848 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE RUBY VALLEY HYDROGRAPHIC )  
BASIN (176), ELKO COUNTY, NEVADA. )

RULING

# 5222

GENERAL

I.

Application 56848 was filed on October 17, 1991, by Smith Bros. Ox Ranch to appropriate 0.0325 cubic feet per second of water from North Murphy's Well to provide stockwater for 700 head of cattle within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 1, SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 2, SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 3, NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, Lot 3 of Section 1, T.30N., R.60E., M.D.B.&M and the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 31, T.31N., R.61E., 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 Section 2, T.30N., R.60E., M.D.B.&M.<sup>1</sup>

II.

Application 56848 was timely protested by the United States of America, Bureau of Land Management (BLM) on the following grounds:<sup>1</sup>

North Murphy Well, application 56848, is located on public land administered by the Bureau of Land Management. This well and the associated pipeline were developed under a cooperative agreement between Bert and Paul Smith and the BLM.

BLM's current water rights policy is to obtain at least  $\frac{1}{2}$  interest in the water right when there is an expenditure of government funds in a water development. BLM spent approximately \$10,000 on the North Murphy Well and Pipeline development in 1973. This included drilling and casing the well, furnishing and installing

<sup>1</sup> File No. 58525, official records in the Office of the State Engineer.

the pipeline, and furnishing and setting up the storage tank. The Smiths contribution was equipping the well and maintenance, with an estimated value of \$2,000.

BLM needs water from this well and pipeline for multiple use management of the surrounding public lands. These uses include livestock grazing and wildlife. BLM is in the process of submitting a water right application on this well for .006 cfs. The well log indicates that North Murphy Well produces 60 gpm (.134 cfs). Therefore, the needs of both the Smith brothers (.0325 cfs) and BLM could be met from this well. If the BLM application is approved, we will withdraw our protest of application 56848.

### FINDINGS OF FACT

#### I.

Nevada Revised Statutes § 533.365 (3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that a hearing is not necessary to consider the merits of the protest.

#### II.

The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock on public lands unless the applicant for the permit is legally entitled to place livestock on the public lands for which the permit is sought.<sup>2</sup> The proposed point of diversion and places of use are contained within the Ruby 7 Allotment. By letter dated November 22, 1991, the BLM informed the State Engineer that Bert N. and Paul W. Smith (aka Smith Bros. Ox Ranch) are recognized as the permittee and range user at the point of diversion and place of use of Application 56848. On January 13, 2003, the Smith Bros. Ox Ranch submitted a copy of their current grazing permit from the BLM confirming the 1991 range user information is still correct.<sup>1</sup> The State Engineer finds that the applicant is entitled by the proper

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<sup>2</sup> NRS § 533.503.

federal agency to place livestock upon the public range that is serviced by the water source described under Application 56848.

**III.**

All water sources within the boundaries of the State belong to the public and are subject to the laws of the State of Nevada relating to the appropriation and use of water and not otherwise.<sup>3</sup> Application 56848 was protested in part on the grounds that it is BLM policy to acquire a partial interest in a water right in those cases where the federal government has made a contribution to the water development.<sup>1</sup> No similar requirement exists within the Nevada Revised Statutes or the policies established by the State Engineer's Office; therefore, the State Engineer finds that this protest issue will not be considered.

**IV.**

Application 56848 was protested by the BLM on the grounds that its approval by the State Engineer would conflict with the BLM's directive to manage the land entrusted to them under multiple use guidelines. Examples were cited of the multiple uses of these waters including wildlife and stock watering purposes. The State Engineer finds that the approval of Application 56848 would not hinder the multiple use of the land since the application is for stock watering purposes and any water pumped to the stock tanks would be available for wildlife use.

**V.**

The BLM protest to Application 56848 stated in part that, "BLM is in the process of submitting a water right application on this well for .006 cfs. The well log indicates that North Murphy Well produces 60 gpm (.134 cfs). Therefore, the needs of both the Smith brothers (.0325 cfs) and BLM could be met from this well." The State Engineer finds that a review of the records in the Office of the State Engineer show Application 63208 was filed by

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3 NRS § 533.025.

the BLM on June 26, 1997, for 0.006 cfs for stockwatering and wildlife purposes on the same source as Application 56848.

**VI.**

Application 56848 was filed to appropriate underground water from an existing well. 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 Applications 56848 and 63208, there are no additional permitted, vested or reserved water right filings appurtenant to this well.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>4</sup>

**II.**

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:<sup>5</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.**

The State Engineer concludes that stockwatering is a beneficial use and that the applicant is the current range user of the federal grazing allotment serviced by North Murphy's Well; therefore, the approval of Application 56848 would not threaten to prove detrimental to the public interest.

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4 NRS chapters 533 and 534.

5 NRS chapter § 533.370(3).

IV.

The State Engineer concludes there is unappropriated water at the source.

V.

The State Engineer concludes there are no additional permitted, vested, or reserved water right filings appurtenant to North Murphy's Well; therefore, approval of Application 56848 would not conflict with existing rights.

RULING

The protest to Application 56848 is hereby overruled and said application is hereby approved subject to the following conditions:

1. Payment of the statutory permit fees;
2. To all other existing rights.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 27th day of  
February, 2003.