

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

IN THE MATTER OF APPLICATIONS)
67968 AND 67969 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF SUMMIT SPRING AND SEEP)
SPRING WITHIN THE VIRGIN)
VALLEY HYDROGRAPHIC BASIN)
(222), LINCOLN COUNTY, NEVADA.)

RULING
5228

GENERAL

I.

Application 67968 was filed on September 4, 2001, by Kenneth Newby to appropriate 0.0222 cubic feet per second (cfs) of water from Summit Spring for stockwatering purposes within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.10S., R.69E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.10S., R.69E., M.D.B.&M.¹

II.

Application 67969 was filed on September 4, 2001, by Kenneth Newby to appropriate 0.0222 cfs of water from Seep Spring for stockwatering purposes within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T.10S., R.69E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T.10S., R.69E., M.D.B.&M.²

III.

Applications 67968 and 67969 were timely protested by the U.S.D.I., Bureau of Land Management (BLM) on the following grounds:¹

The BLM has identified a need at this site for wildlife and stockwatering purposes, and intends to file an application to appropriate waters at this site for such purposes.

Therefore the protestant requests that the application be denied.

¹ File No. 67968, official records in the Office of the State Engineer.

² File No. 67969, official records in the Office of the State Engineer.

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 filed by the U.S.D.I., Bureau of Land Management.

II.

Nevada Revised Statute § 533.503 provides that the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock on the public lands unless the applicant for the permit is legally entitled to place livestock on the public lands for which the permit is sought. In response to a September 13, 2001, letter from the State Engineer's office, the BLM informed the State Engineer that the locations described in the applications under place of use (item 6/7) fall within the Summit Spring Allotment. On this allotment, the current grazing permittee is the Newby Cattle Co. (Kenneth Newby).¹ The State Engineer finds that the applicant is entitled by the proper federal agency to place livestock upon the public range that is serviced by the spring sources described under Applications 67968 and 67969.

III.

Applications 67968 and 67969 were protested by the BLM, in part, on the grounds that water from the springs is needed by wildlife. Nevada Water Law requires that sufficient water must be retained at the springs under NRS § 533.367 to support a customary use of the water for wildlife. The State Engineer finds that sufficient protection exists for wildlife use under NRS § 533.367.

IV.

A determination was made, after an examination of the records of the Office of the State Engineer, that there are no additional water right permits, proofs or claims filed for the proposed water sources.³ The State Engineer finds that the approval of Applications 67968 and 67969 would not conflict with existing water rights.

³ Water Rights Township Plats Township 10 South, Range 69 East, M.D.B.&M., official records in the Office of the State Engineer.

V.

The BLM protest indicates that the BLM intends to file an application to appropriate waters at both spring sites in the future. The State Engineer finds the BLM has not filed applications for water use at these springs.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

- 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 statutory requirements mandated under NRS § 533.367 assure that the granting of new appropriations of water from spring sources will not interfere with the customary use of the water by wildlife. The State Engineer concludes that any permit approved under Applications 67968 and 67969 would be issued in accordance with NRS § 533.367 thereby allowing sufficient water to be retained at the source for wildlife.

IV.

The State Engineer concludes that stockwatering is a beneficial use and the applicant is the current range user of the federal grazing allotment; therefore, the approval of Applications 67968 and 67969 would not threaten to prove detrimental to the public interest.

⁴ NRS chapter 533.

⁵ NRS § 533.370 (3).

RULING

The protests to Applications 67968 and 67969 are hereby overruled and said applications are hereby approved subject to:

1. The payment of the statutory permit fees;
2. All other existing rights; and
3. Ensuring that wildlife which customarily uses the water will have access as set forth under NRS § 533.367

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 5th day of
May, 2003.