

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

IN THE MATTER OF APPLICATIONS)
44858 AND 50798 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN)
THE MARYS RIVER AREA (42), AND)
INDEPENDENCE / PEQUOP VALLEY (188))
HYDROGRAPHIC BASINS, ELKO)
COUNTY, NEVADA.)

RULING

#5428

GENERAL

I.

Application 44858 was filed on October 29, 1981, by the Bureau of Land Management to appropriate 0.016 cubic feet per second (cfs) of water from an underground source identified as the Morgan Hill Well, for stockwatering purposes within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, T.38N., R.58E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 27.¹

II.

Application 50798 was filed on April 6, 1987, by the U.S. Department of the Interior, Bureau of Land Management to appropriate 0.028 cfs of water from an underground source identified as the Wells Conservation Camp Well, for stockwatering purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T.37N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 14.²

III.

Application 44858 was timely protested on grounds, which will not be considered in this ruling.¹

FINDINGS OF FACT

I.

Nevada Revised Statute § 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, based on the protest issues, that a hearing is not necessary.

¹ File No. 44858, official records in the Office of the State Engineer.

II.

In 2003, the Nevada Legislature amended NRS § 533.503 to provide, in part, that:

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

- (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 grazing permit, that is issued by the appropriate governmental entity to the applicant for the permit.

The law clearly states that the State Engineer shall not issue a permit to appropriate water for livestock unless the applicant 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.

The State Engineer finds the BLM does not own, lease or otherwise possess a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought and is therefore not qualified to obtain a stockwater permit under Nevada Water Law.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(4).

- 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 threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that Nevada law prohibits the State Engineer from issuing a permit to appropriate water for livestock, unless the applicant 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, and since the BLM does not meet this requirement, the subject applications must be denied in accordance with NRS § 533.503.

RULING

Applications 44858 and 50798 are hereby denied under the provisions of NRS § 533.503. No ruling is made on the merits of the protest to Application 44858.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 14th day of
October, 2004.