

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

IN THE MATTER OF APPLICATION 41943)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE EAST WALKER)
AREA (109), LYON COUNTY, NEVADA.)

RULING

#5443

GENERAL

I.

Application 41943 was filed on July 28, 1980, by the U.S.D.I. Bureau of Land Management to appropriate 0.01336 cubic feet per second of water from Chipmunk Well for livestock (stockwatering) purposes within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T.9N., R.27E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 12.¹

FINDINGS OF FACT

I.

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

¹ File No. 41943, official records in the Office of the State Engineer.

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.²

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³

- 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 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 application must be denied in accordance with NRS § 533.503.

² NRS chapters 533 and 534.

³ NRS § 533.370 (4).

RULING

Application 41943 is hereby denied under the provisions of NRS § 533.503.

Respectfully submitted,

A handwritten signature in cursive script that reads "Hugh Ricci, P.E." is written over a faint circular stamp.

Hugh Ricci, P.E.
State Engineer

HR/TW/jm

Dated this 27th day of
October, 2004.