

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

IN THE MATTER OF APPLICATION 70099)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE KOBEH VALLEY)
HYDROGRAPHIC BASIN (139), EUREKA)
COUNTY, NEVADA.)

RULING

5571

GENERAL

I.

Application 70099 was filed on June 9, 2003, by 3F LLC, to appropriate 0.1 cubic foot per second of water from an underground source for stockwatering purposes within the SE¼ NW¼ of Section 30, T.19N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of said Section 30.¹

II.

Application 70099 was timely protested by the U.S.D.I., Bureau of Land Management (BLM) on the following grounds:¹

The U.S. Bureau of Land Management (BLM) is the legal entity to manage public lands for the purposes intended by the Federal Land Management and Policy Act (FLPMA). FLPMA mandates multiple use which is defined as "the management of public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people." The applicant has no authorization to develop the public lands identified in the application. BLM may withdrawal [sic] the protest if the application is modified so that the places of use are located entirely on private lands or authorization of all water development has been obtained.

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 that in the case of protested Application 70099, there is sufficient information

¹ File No. 70099, official records in the Office of the State Engineer.

contained within the records of the Office of the State Engineer to gain a full understanding of the issues and an administrative hearing on this matter is not required.

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.²

In support of Application 70099, the applicant submitted a copy of his grazing permit on January 8, 2004. On January 29, 2004, the State Engineer's office sent a letter to the BLM requesting information regarding the applicant's status as a grazing permittee within the place of use described under Application 70099. The BLM responded by letter dated March 2, 2004, and indicated that Application 70099 is located on the Willow Ranch Allotment and confirmed the applicant is the current authorized range user/permittee.¹

The State Engineer finds that the applicant is entitled by the proper federal agency to place livestock upon the public range described under Application 70099.

III.

The protest indicates that the place of use of Application 70099 is on public land managed by the BLM under the guidelines of the Federal Land Management and Policy Act (FLPMA) and FLPMA mandates multiple use, which is defined as the management of public

² NRS § 533.503.

lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.

Application 70099 requests an appropriation of water for stockwatering purposes from an existing well within the applicant's grazing allotment. The applicant has provided a copy of his grazing permit and the BLM has confirmed that the applicant is the authorized livestock permittee. The applicant has further indicated that this well has always been historically used for stockwatering purposes, to his knowledge.¹

The State Engineer finds that the BLM, by issuing the applicant a grazing permit, implicitly considers stockwatering as one of the multiple uses under the FLPMA guidelines.

IV.

The protest also indicates that the applicant has no authority to develop the public lands. The applicant has indicated that the well exists and has been historically used for stockwater use. Additionally, water right permits issued by the State Engineer do not extend the permittee the right of ingress and egress on public, private, or corporate lands, and do not waive any permitting requirements by other State, Federal, and local agencies. It does not appear that the applicant will need to do any development to the public lands, but if any development is necessary, the issuance of a water right permit will not absolve the applicant of any additional permitting requirements from other regulatory agencies.

Before any diversion of water may be made from a well, the appropriator must make application to and obtain from the State Engineer, a permit to appropriate the water.³ An examination of the records of the Office of the State Engineer, show that there is no additional water right permits, proofs or claims filed at the proposed points of diversion.⁴ Nevada state law controls both the process and the substance of a proposed appropriation and use of water in the State of Nevada. It is the responsibility of the State Engineer to control the use of the State's water in accordance with the provisions set forth in the Statutes of the State of Nevada.⁵

The State Engineer finds that Federal permitting and access requirements would not be annulled by the issuance of a water right permit to the applicant. The State Engineer further finds that there are no existing rights at the proposed point of diversion.

³ NRS § 534.050 (3).

⁴ Nevada Division of Water Resources Water Rights Database, Special Hydrographic Abstract, December 31, 2003.

⁵ NRS chapters 532 to 538, inclusive, also chapters 540, 543 and 544.

V.

Application 70099, if approved and fully utilized, would appropriate a quantity of water sufficient to water a maximum of 450 cattle or approximately 10 acre-feet annually (afa). As a comparison, the maximum duty for a domestic well is 2.02 afa. The amount requested in Application 70099 is about five times the quantity of water allowed for one domestic well for which no permit is required.⁶ Nevada water law does not prevent the granting of permits to applicants later in time on the grounds that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as the rights of existing appropriators can be satisfied.

The State Engineer finds that the quantity of water requested in this application is minimal and the approval of such a small quantity would not impair existing ground water rights within the Kobeh Valley Hydrographic Basin.

VI.

The Office of the State Engineer recognizes that the number of cattle and the time frame for grazing those cattle sometimes change when a grazing permit is issued. To accommodate these potential changes, water right permits for stockwatering are sometimes issued for year round use when the applicant indicates this time frame under Item No. 7 of the water right application.

Application 70099 requests a period of use from Jan. 1 to Dec. 31.¹ The State Engineer finds that the period of use requested under the application is acceptable and the period of use need not be limited to the duration of the current grazing permit.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁸

⁶ NRS § 534.180.

⁷ NRS chapters 533 and 534.

⁸ NRS § 533.370 (4).

- 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 the applicant is the current range user of the federal grazing allotment; therefore, the approval of Application 70099 would not threaten to prove detrimental to the public interest.

IV.

The State Engineer concludes there is unappropriated water at the source and the proposed use will not conflict with existing rights.

V.

The State Engineer concludes that the protest claims of the BLM are without merit.

RULING

The protest to Application 70099 is hereby overruled and said application is approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 8th day of
March, 2006.