

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

IN THE MATTER OF APPLICATION 73426)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE DIXIE VALLEY HYDROGRAPHIC)
BASIN (128), CHURCHILL COUNTY,)
NEVADA.)

RULING

#5672

GENERAL

I.

Application 73426 was filed on November 3, 2005, by the Jersey Valley Cattle Company, LLC, to appropriate 0.0078 cubic feet per second of water from an underground source within the Dixie Valley Hydrographic Basin for stockwatering purposes within a portion of the SE¼ of Section 8 a portion of the SW¼ SW¼ of Section 9, the NW¼ of Section 16, and the NE¼ of Section 17, T.23N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SW¼ of said Section 9.¹

II.

Application 73426 was timely protested by Churchill County on the grounds that Application 73426 has a junior priority to the senior priority applications held by Churchill County that are seeking to appropriate all available underground water from within the Dixie Valley Hydrographic Basin. Churchill County also indicated that the protest would be withdrawn if the Applicant would make a separate water agreement with Churchill County.¹

¹ File No. 73426, official records in the Office of the State Engineer.

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 a hearing is not necessary to consider the merits of the protest filed by Churchill County.

II.

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

1. 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.

On April 5, 2006, the State Engineer's office sent a letter by facsimile to the Bureau of Land Management (BLM), Winnemucca Office, requesting information regarding the Applicant's status as a federal grazing permittee within the place of use described under Application 73426. Two e-mail responses received from the BLM on April 7, and April 26, 2006, indicated that the Jersey Valley Cattle Company, LLC, (246 cattle) has been the authorized range permittee for the single permittee Wall Allotment since December 2003. The State Engineer finds that the Applicant is entitled by the proper federal agency to place livestock upon the public range described under Application 73426.

III.

Application 73426 was filed to appropriate underground water for stockwatering purposes on public lands administrated by the BLM. Through the examination of the records in the Office of the State Engineer a determination was made that there is only one other permitted water right within a three-mile radius of the point of diversion of Application 73426. This senior water right, Permit 29898, Certificate 9733, has the same point of diversion and place of use as Application 73426 and was issued for stockwatering purposes with an annual duty sufficient to water 1,000 cattle or about 7.31 acre-feet annually (afa). The current owner of record of Permit 29898 is Monte W. Loyd; however, a change of address form in the permit file, submitted by Mark W. Loyd, indicates Monte W. Loyd is deceased. The resident agent, O. Kent Maher, for the Jersey Valley Cattle Company, LLC, was contacted by telephone and asked about the ownership of Permit 29898, Certificate 9733. Mr. Maher

responded that the Jersey Valley Cattle Company, LLC, had purchased the BLM range allotment through probate court from the estate of Jerry Kelly and he was unaware of the existence of Permit 29898, Certificate 9733. On April 26, 2006, Mike Stremmer, an officer of the Jersey Valley Cattle Company, LLC, was contacted for information on Permit 29898, Certificate 9733. Mr. Stremmer indicated that he believed that Jerry Kelly had an arrangement to use the water from Permit 29898, but was not absolutely certain of this because the well was inoperable when the Jersey Valley Cattle Company took possession of the Wall Allotment. Mr. Stremmer also indicated that he had unsuccessfully tried to acquire legal title or use of Permit 29898, Certificate 9733, and was left with no other option but to file for a new appropriation under Application 73426. Mr. Stremmer summarized these statements by a faxed letter, which was received on in the Office of the State Engineer May 4, 2006. In May 2006 the Office of the State Engineer left several messages on the answering machine of Mark W. Loyd asking for a return call, but no response was received. The State Engineer finds that Application 73426 was filed because the Applicant has been unable to establish legal title or use of the existing water right on the BLM Wall Allotment and that the existing water right, Permit 29898, Certificate 9733, may not be utilized by Monte W. Loyd on the Wall Allotment because Mr. Loyd is not the authorized BLM grazing permittee.

IV.

Application 73426 requests a minor amount of underground water for an occasional use. The amount of water requested is enough to water 250 cattle and the BLM authorized period of use is for 5 months. The maximum

annual duty that could be considered for approval under Application 73426 for year-round use would be 5.656 afa; while the anticipated current seasonal use will be only 2.356 afa. The State Engineer finds that Application 73426 is for a minor amount of water at a remotely located well and will not adversely impact existing groundwater rights.

V.

Churchill County's protest of Application 73426 is based, in part, on Application 73426 being a junior priority to the senior priority applications held by Churchill County.² On March 29, 2006, the Office of the State Engineer received a letter conditionally withdrawing the protest by Churchill County subject to an agreement between Churchill County and Jersey Valley Cattle Company, LLC. The State Engineer finds that with the withdrawal of Churchill County's protest Application 73426 may be considered for approval.

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;

² See, Churchill County Application Nos. 49200, 49201, 49202, 49203, 49204, 49205, 49794, 49795, 49796, 49797, 49798, 49799 and 49800, official records in the Office of the State Engineer.

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(5).

- 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 the Applicant has met the criteria established under NRS § 533.503 for filing a stockwater application.

IV.

The State Engineer concludes that Application 73426 is for a minor amount of water at a remote well location and will not adversely impact existing groundwater rights.

V.

The State Engineer concludes that the protest to Application 73426 has been conditionally withdrawn and the Protestant has agreed to allow Application 73426 to be approved prior to its existing groundwater applications.

VI.

Permit 29898, Certificate 9733 was issued to provide water from an existing well on public land for livestock within the currently designated Wall Allotment administered by the BLM. Currently, the owner of this water right and the grazing permittee for the Wall Allotment are separate entities. As such, neither party can place the water from the existing well to beneficial use. The Applicant has been unable to establish legal title to Permit 29898, Certificate 9733 and therefore, has filed Application 73426 to create a means of watering livestock within this area of his grazing allotment. The State Engineer concludes that approval of

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Application 73426 would not threaten to prove detrimental to the public interest nor conflict with existing rights.

RULING

The protest to Application 73426 is hereby withdrawn and Application 73426 is hereby approved subject to existing water rights and payment of the statutory permit fees.

Respectfully submitted,

Handwritten signature of Tracy Taylor in black ink, consisting of stylized initials 'TT' followed by a surname.

TRACY TAYLOR, P.E.
State Engineer

TT/WHR/jm

Dated this 26th day of
October, 2006.