

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

IN THE MATTER OF APPLICATIONS 66104 )  
AND 66106 FILED TO APPROPRIATE THE )  
PUBLIC WATERS FROM AN UNDERGROUND )  
SOURCE WITHIN THE DRY VALLEY )  
HYDROGRAPHIC BASIN (198), LINCOLN )  
COUNTY, NEVADA. )

**RULING**  
**#5934**

**GENERAL**

**I.**

Application 66104 was filed on February 28, 2000, by the United States Department of the Interior, Bureau of Land Management, (BLM) to appropriate 0.0012 cubic feet per second (cfs) of water from an underground source for the purpose of watering wildlife and wild horses, that being 20 horses and 100 deer within the NW¼ NE¼ of Section 29, T.1S., R.69E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 29.<sup>1</sup>

**II.**

Application 66106 was filed on February 28, 2000, by the BLM to appropriate 0.0018 cfs for the purpose of watering wildlife and wild horses, that being 20 wild horses, 100 deer and 25 elk within the SE¼ SW¼ of Section 16, T.1S., R.70E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SW¼ of said Section 16.<sup>2</sup>

**III.**

Application 66104 was timely protested by A. Pete and Marlene Delmue on the following grounds:<sup>1</sup>

I have maintained the windmill & well for over fifty years. I replaced windmill & tower, foot valves, water column, etc. The last maintenance cost \$700 plus traided [sic] work. I graze through dormant stage, winter months while doing so, the range substantiality [sic] improved. No horses have watered there for the last forty year's [sic] or longer. If the BLM puts horses there & operates well year round, the range will deplete, leaving nothing for my cattle, come winter to graze on.

<sup>1</sup> File No. 66104, official records in the Office of the State Engineer.

<sup>2</sup> File No. 66106, official records in the Office of the State Engineer.

#### IV.

Application 66106 was timely protested by Lincoln County Commissioners on the following grounds:<sup>2</sup>

The Lincoln County Commissioners have received a request from the permit holder in the area, the existing well and pipe and watering tank have been maintained by this permit holder and he has filed on the water. We believe it is in the better interest of the permit holder and the county government that the ownership of this water and well is in private hands. It will provide water to wild life and wild horses by being pumped by the rancher.

#### V.

Application 66106 was timely protested by Pete T. Delmue on the following grounds:<sup>2</sup>

This application states the BLM is seeking water to serve "wildlife". Federal Public Law grants authority to the BLM to manage wild horses and burros. Authority to manage wildlife rests with the Nevada Department of Wildlife; therefore, the BLM has no legal mandate or necessity to obtain or use water to manage or serve wildlife.

### **FINDINGS OF FACT**

#### I.

On May 14, 2007, the Office of the State Engineer sent certified letters, one relative to each of the above mentioned applications, to the Protestants and the Applicant. These letters requested additional information regarding the history of these wells, both of which are on public lands managed by the BLM. The letters stated: "Please respond in writing to this office...within sixty (60) days from the date of this letter. Failure to provide the requested information will be taken as an indication that you no longer have any interest in this matter."

Only the Applicant responded to this request for additional information. None of the Protestants responded.<sup>1,2</sup> All the properly signed certified mail return receipts were returned by the U.S. Postal Service to the Office of the State Engineer. The State Engineer finds that the Applicant and the Protestants have been properly noticed of the need to provide evidence of continued interest in the subject applications.

The State Engineer also finds that the Protestants have failed to express a continued interest in maintaining their protests to Applications 66104 and 66106. Furthermore, the Applicant responded in a timely manner, reaffirming its interest in pursuing these applications.

## II.

Application 66104 requests a total amount of water sufficient to water 20 horses and 100 deer. The standard duty for horses is 20 gallons per day per head and the standard duty for deer is 4 gallons per day per head. This equates to a total requested appropriation of 0.896 acre-feet per year.

Application 66106 requests a total amount of water sufficient to water 20 horses, 25 elk and 100 deer. The duty for horses and deer are out lined above. The duty for elk is 20 gallons per day per head. Thus Application 66106 seeks to appropriate 1.456 acre-feet per year.

The amounts requested in each of these applications are less than the amount allowed for one domestic well for which no permit is required.<sup>3</sup> The State Engineer finds that the quantity of water requested in these applications is minimal, and approval of such a small quantity would not impair existing water rights.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination:<sup>4</sup>

### II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:<sup>5</sup>

- 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.

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<sup>3</sup> NRS § 534.180.

<sup>4</sup> NRS § 533.

<sup>5</sup> NRS § 533.370(5).

**III.**

The Protestants were properly notified of the requirement for additional information and have failed to submit the information to the State Engineer's office. The State Engineer concludes that the failure to submit the requested information demonstrates the Protestants' lack of interest in pursuing their protests to Applications 66104 and 66106.

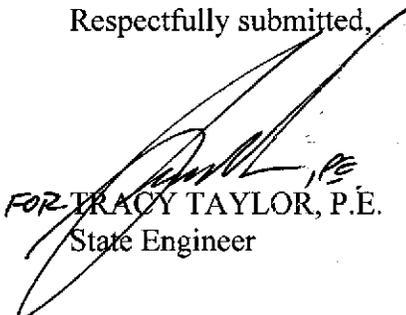
**IV.**

Application 66104 and Application 66106 request appropriations of underground water for the purposes of watering wildlife by the BLM. Nevada water law recognizes this purpose as a beneficial use, and recognizes the BLM as an entity entitled to file an application to appropriate water for this beneficial use within the confines of state law. The State Engineer concludes that the approval of the subject application would not threaten to prove detrimental to the public interest.

**RULING**

The protests are overruled and Applications 66104 and 66106 are hereby approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,

  
FOR TRACY TAYLOR, P.E.  
State Engineer

TT/MES/jm

Dated this 9th day of

February     , 2009     .