

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

IN THE MATTER OF APPLICATIONS 46872 AND)
47979 TO APPROPRIATE THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE IN FISH LAKE)
VALLEY GROUNDWATER BASIN (BASIN 117),)
WITHIN ESMERALDA COUNTY, NEVADA.)

RULING

3840

GENERAL

I.

Application 47979 was filed on April 13, 1984, by Agent Bruce L. Rice for Applicant William S. Wright to appropriate 0.2 cubic-feet per second (CFS) of water from an underground source (Tresspass Well) for stockwatering (160 head cattle) and domestic purposes within NW1/4 of NW1/4, Section 16, T.4S., R.36E., M.D.B.&M., within Fish Lake Valley Groundwater Basin (Basin 117). The point of diversion is located within the NW1/4 of NW1/4 Section 16, T.4S., R.36E., M.D.B.&M., or at a point from which the SE corner of said Section 16 bears S 45° 52' E at a distance of 7,070 feet.¹

II.

Application 46872 was filed on May 4, 1983, for applicant Verna Wallace to appropriate 0.0016 CFS of water from an underground source for stockwatering (40 head cattle) purposes within the W1/2 Section 16, T.4S., R.36E., M.D.B.&M., within Fish Lake Valley Groundwater Basin (Basin 117). The point of diversion is located within the NW1/4 of NW1/4 Section 16, T.4S., R.36E., M.D.B.&M., or at a point from which the NW corner of said Section 16 bears N 22° 36' W at a distance of 453 feet. The application explained that an Indian Grazing Allotment filed with the Bureau of Land Management in 1979 was pending approval.¹

¹ Public record in the office of the State Engineer, Nevada Division of Water Resources.

III.

Plotting upon a map and comparing the surveying ties for the points of diversion specified by Applications 46872 and 47979 demonstrates that the two points of diversion are approximately fifty (50) feet apart.

IV.

A protest to Application 47979 was filed September 28, 1984, in compliance with NRS² Chapter 533.365, by James P. Wallace for the following reasons and on the following grounds, to wit:¹

"This water permit sight is within 1 mile of 4 residence and is surrounded by deeded land on 3 sides. This is unlawful under laws 568.340 in State of Nevada Agriculture Laws & Regulations. The livestock have been a nuisance in the past when watered in this location by repeated fence breaking into private property."

The protestant requests "that the application be denied and that the use of water herein claimed by protestant be confirmed and that an order be entered establishing said right and for such other relief as the State Engineer deems just and proper."

V.

A protest to Application 46872 was filed October 17, 1983, in compliance with NRS Chapter 533.365, by Kemp Conn as agent for the U.S. Bureau of Land Management for the following reasons and on the following grounds, to wit:¹

"The development at that site is a Bureau project, developed for use by legitimate and authorized range users. The applicant has no authorized range use in the area, and has no right to develop or convey this water on or across public lands."

² NRS means Nevada Revised Statutes.

The protestant requests "that the application be denied and that the use of water herein claimed by protestant be confirmed and that an order be entered establishing said right and for such other relief as the State Engineer deems just and proper."

VI.

A protest to Application 46872 was filed October 28, 1983, in compliance with NRS Chapter 533.365, by Wm. S. Wright for the following reasons and on the following grounds, to wit:¹

"This application is filed on the stock well on my Section 15 lease. The applicant has filed for stock water and domestic use she has no grazing rights on this Bureau Of Land Management lease therefore could not use it for stock water or domestic use."

The protestant requests "that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper."

VII.

Nevada Revised Statute 568.340 provides in purtenant parts the following:

1. It shall be unlawful for any person owning or having charge of any livestock ...to herd the same or to permit them to be herded within 1 mile of a bona fide home or a bona fide ranchhouse.

....

3. Nothing in this section shall: (a) Prevent the owners from herding or grazing their livestock on their own lands. (b) Be construed as to prevent livestock being driven along any public highway.³

³ The State Engineer interprets the words "owner" and "owns" as used in 568.340(3) to include the meanings of "legitimate control," and "rightful custody of livestock," and "rightful occupancy and use of land."

FINDINGS OF FACT

I.

The James P. Wallace protest does not describe any claim of water right by protestant Wallace.¹

II.

The proposed place of use under Application 47979 is located within the proposed place of use under Application 46872.¹

III.

The proposed place of use under each Application 46872 and 47979 is included within the public lands administered by the U.S. Bureau of Land Management.¹

William Wright is the range permittee licensed by the U.S. Bureau of Land Management to graze cattle within the proposed place of use under Application 47979.¹

IV.

Indian Allotment Application N-20371 was submitted on August 2, 1978, by Verna Irene Wallace to the U.S. Bureau of Land Management (US BLM) for 160 acres of land within SW1/4 Section 16, T.4S., R.36E., M.D.B.&M. Application N-20371 subsequently was denied by the US BLM and the case closed.⁴

Indian Allotment Application N-20372 was submitted on August 2, 1978, by Verna Wallace to the U.S. Bureau of Land Management (US BLM) for 160 acres of land within NW1/4 Section 16, T.4S., R.36E., M.D.B.&M. Application N-20372 subsequently was denied by the US BLM and the case closed.⁴

Verna Irene Wallace and Verna Wallace are not the same person.⁴

⁴ Copies of documents from US BLM records for Applications N-20371 and N-20372. Public record in the office of the State Engineer, Nevada Division of Water Resources.

V.

The areas specified under Indian Allotment Applications N-20371 and N-20372, being respectively the SW1/4 Section 16 and the NW1/4 Section 16, T.4S., R.36E., are coincident with the place of use specified under Water Right Application 46872, being the W1/2 Section 16, T.4S., R.36E.

VI.

Verna Wallace, the applicant under Water Right Application 46872, and Verna Irene Wallace do not jointly or severally own or control the land specified as the place of use under Application 46872, and neither are grazing permittee.^{1,4}

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁵

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁶

- A. There is no unappropriated water in the proposed source, or
- B. The proposed use or change conflicts with existing rights, or
- C. The proposed use or change threatens to prove detrimental to the public interest.

⁵ NRS Chapters 533 and 534.

⁶ NRS Chapter 533.370(3).

III.

Although NRS 568.340(1) provides that it shall be unlawful to herd livestock within one (1) mile of a home or ranch house, NRS 568.340(3) also provides that nothing in that section shall prevent owners from herding or grazing their livestock on their own lands.

Since William Wright is the range permittee licensed by the U.S. Bureau of Land Management (U.S. BLM) to graze cattle within U.S. BLM administered land which is the place of use under Application 47979, then William Wright qualifies under NRS 568.340(3) as an owner grazing cattle on his own land, or land controlled by him.

Therefore, the herding or grazing of livestock by William Wright within the place of use specified by Application 47979 would not violate NRS 568.340.

IV.

Although livestock may create a nuisance by "fence breaking into private property," as explained by the James P. Wallace protest, the State Engineer does not have authority to investigate or adjudicate the situation under Nevada Water Law. Approval of Water Right Application 47979 and exercise of the water right will not cause a violation of NRS 568.340.

V.

The record lacks evidence to establish that the approval of Application 47979, issuance of a water right permit, and subsequent exercise of that water right in compliance with reasonable permit requirements and Nevada Water Law will conflict with existing water rights, or will be detrimental to the public interest.

VI.

Approval of a water right application and issuance of a permit does not authorize ingress and egress by permittee on public, private, or corporate lands.

The applicant under Application 46872, Verna Wallace, does not own or control the land specified as place of use under that application and does not have access to develop the water source and establish beneficial use, and therefore approval of the application would be detrimental to the public interest.

RULING

I.

The protest to Application 47979 by James P. Wallace is hereby overruled on the following grounds:

That approval of Application 47979, and subsequent exercise of that water right, i.e., watering livestock within the place of use specified by Application 47979, in compliance with reasonable permit requirements will not result in violation of NRS 568.340.

II.

Application 47979 is hereby approved and a permit will be issued upon receipt of the permit fee, on the grounds that this appropriation will not conflict with existing rights and will not be detrimental to the public interest.

III.

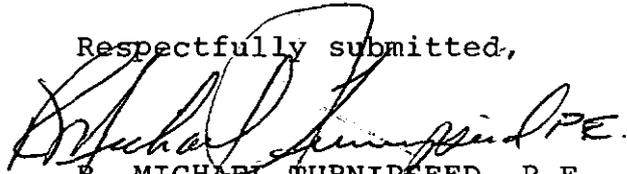
The protest to Application 46872 by the U.S. Bureau of Land Management is hereby sustained in part on the grounds that the applicant is not the grazing permittee and is not authorized to occupy the place of use; however, no determination is made concerning the use of water claimed by the protestant.

The protest to Application 46872 by Wm. S. Wright is hereby sustained on the grounds that the applicant is not the grazing permittee and is not authorized to occupy the place of use.

IV.

Application 46872 is hereby denied on the grounds that the approval of the application would be detrimental to the public interest because the applicant does not own or control the land specified as place of use under the application and would not have access to develop the water source and establish beneficial use.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/RT/pm

Dated this 17th day of
October, 1991.