

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

IN THE MATTER OF APPLICATIONS 56739,)
56740, 56741, 59103, 59354, 60453,)
60476, 60477 AND 60478 FILED TO)
APPROPRIATE THE WATER OF VARIOUS)
SPRINGS WITHIN DOUGLAS COUNTY, NEVADA.)

RULING

4519

GENERAL

I.

Application 56739 was filed on September 11, 1991, by the United States of America, Department of Interior, Bureau of Land Management ("BLM") to appropriate 0.0129 cubic foot per second (cfs) of water from Red Canyon Spring No. 1 for stockwatering, wildlife and recreational purposes within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.11N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.11N., R.22E., M.D.B.&M. The application indicated that the water would be utilized to provide water for 2000 sheep, 35 deer and 100 user recreational days.¹

II.

Application 56740 was filed on September 11, 1991, by the BLM to appropriate 0.0129 cfs of water from Red Canyon Spring No. 2 for stockwatering, wildlife and recreational purposes within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T.11N., R.22E., 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 Section 15, T.11N., R.22E., M.D.B.&M.² The application indicated that the water would be utilized to provide water for 2000 sheep, 35 deer and 100 user recreational days.

III.

Application 56741 was filed on September 11, 1991, by the BLM to appropriate 0.0129 cfs of water from Red Canyon Spring No. 3 for

¹ File No. 56739, official records in the office of the State Engineer.

² File No. 56740, official records in the office of the State Engineer.

stockwatering, wildlife and recreational purposes within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T.11N., R.22E., 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 Section 15, T.11N., R.22E., M.D.B.&M.³ The application indicated that the water would be utilized to provide water for 2000 sheep, 35 deer and 100 user recreational days.

IV.

Application 59103 was filed on August 5, 1993, by the BLM to appropriate 0.01 cfs of water from 500' Clock Spring for stockwatering purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T.14N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T.14N., R.22E., M.D.B.&M.⁴ The application indicated that the water would be utilized to provide water for 1200 sheep, 50 cattle, 25 horses, 25 deer and recreational use.

V.

Application 59354 was filed on October 29, 1993, by the BLM to appropriate 0.01 cfs of water from Pinyon Spring for stockwatering purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T.14N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T.14N., R.23E., M.D.B.&M.⁵ The application indicated that the water would be utilized for the watering of 300 cattle, 20 wild horses and 140 deer.

VI.

Application 60453 was filed on September 14, 1994, by the BLM to appropriate 0.0037 cfs of water from Buena Suerte Spring #1 for stockwatering purposes within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of

³ File No. 56741, official records of the office of the State Engineer.

⁴ File No. 59103, official records of the office of the State Engineer.

⁵ File No. 59354, official records of the office of the State Engineer.

Section 9, T.11N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T.11N., R.22E., M.D.B.&M.⁶ The application indicated that the water would be utilized for the watering of 200 cattle, 200 deer, 100 quail, coyotes, songbirds and recreational use.

VII.

Application 60476 was filed on September 15, 1994, by the BLM to appropriate 0.0066 cfs of water from Winter's Mine Spring #1 for stockwatering purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.12N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.12N., R.22E., M.D.B.&M.⁷ The application indicated that the water would be utilized for the watering of 1000 sheep, 75 deer, 100 sage grouse, other game and non-game wildlife and 2-5 hikers/backpackers.

VIII.

Application 60477 was filed on September 15, 1994, by the BLM to appropriate 0.0066 cfs of water from Winter's Mine Spring #2 for stockwatering purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.12N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.12N., R.22E., M.D.B.&M.⁸ The application indicated that the water would be utilized for the watering of 1000 sheep, 75 deer, 100 sage grouse, other game and non-game wildlife and 2-5 hikers/backpackers per day.

IX.

Application 60478 was filed on September 15, 1994, by the BLM to appropriate 0.0066 cfs of water from Winter's Mine Spring #3 for

⁶ File No. 60453, official records of the office of the State Engineer.

⁷ File No. 60476, official records of the office of the State Engineer.

⁸ File No. 60477, official records of the office of the State Engineer.

stockwatering purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.12N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.12N., R.22E., M.D.B.&M.⁹ The application indicated that the water would be utilized for the watering of 1000 sheep, 75 deer, 100 sage grouse, other game and non-game wildlife and 4-5 hikers/backpackers per day.

X.

All of the subject applications were filed in accordance with the provisions for the appropriation of water set forth in the Nevada Revised Statutes 533.325.

FINDINGS OF FACT

I.

Application 56739, 56740 and 56741 were filed to appropriate the waters of various springs for stockwatering purposes described on each of the applications as sufficient water for 2000 sheep beginning in May and ending in August of each year. The wildlife use is defined as sufficient water for 35 deer on an annual basis. The recreational use is defined as 100 user days at 2 gallons per user day. The State Engineer finds that the appropriation of water requested under Applications 56739, 56740 and 56741 is primarily for stockwatering purposes.

II.

Applications 59103, 59354, 60453, 60476, 60477 and 60478 were filed to appropriate sufficient water from various springs for the stock watering of significant numbers of cattle and sheep. A secondary appropriation of a minor amount of water for wildlife and recreational use is listed on each application. The State Engineer finds that Applications 59103, 59354, 60453, 60476, 60477 and 60478 are primarily for stockwatering purposes.

⁹ File No. 60478, official records of the office of the State Engineer.

III.

In 1995, the Nevada Legislature amended Nevada Revised Statutes Chapter 533 to include a new section which mandates that the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock on public lands unless the applicant for the permit is legally entitled to place the livestock on the public lands for which the permit is sought.¹⁰ The Nevada Attorney General concluded that the phrase "legally entitled to place the livestock on the public lands for which the permit is sought" excludes the BLM from applying for a stockwater permit since the applicant must have a grazing permit or a lease from the BLM in order to qualify. The Attorney General further concluded that the State Engineer cannot issue a permit on a water right application filed jointly in the name of the BLM and the livestock operator, and that NRS 533.503 is applicable to pending applications.¹¹ The State Engineer finds that the law now requires the applicant to prove legal entitlement to place livestock on public lands. In addition, the State Engineer finds that the BLM is not a qualified applicant for stockwatering permits under NRS 533.503 since it does not hold grazing permits or leases.

IV.

No other claims are on file in the records of the office of the State Engineer and no other water rights of record exist on the sources of water requested for appropriation under these applications. Therefore, the State Engineer finds that there is unappropriated water in the various sources.

V.

The sources of water that are the subject of these applications were determined to be isolated springs and not

¹⁰ NRS 533.503(1)(a).

¹¹ Nevada Attorney General's Opinion 97-05, dated February 11, 1997.

tributary to other surface water sources on which there are existing water rights. Therefore, the State Engineer finds that there would be no interference with existing water rights.

CONCLUSION

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determinations.¹²

II.

Except for the provision of NRS 533.503, the State Engineer shall approve an application which contemplates the application of water to beneficial use, if the conditions of NRS 533.370(1) are met, and:

- A. there is unappropriated water at the proposed source,
- B. the proposed use does not conflict with existing rights, and
- C. the proposed use does not threaten to prove detrimental to the public interest.

III.

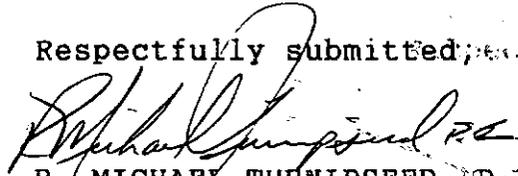
The State Engineer concludes that Nevada law prohibits the State Engineer from issuing a permit to appropriate water for stockwatering purposes on public land unless the applicant is legally entitled to place the livestock on the public land. The State Engineer further concludes that the BLM is not a qualified applicant for stockwatering permits and the subject applications must be denied in accordance with NRS 533.503.

¹² NRS Chapter 533.

RULING

Applications 56739, 56740, 56741, 59103, 59354, 60453, 60476, 60477 and 60478 are hereby denied under the provisions of NRS 533.503. This ruling does not prejudice the Bureau of Land Management from filing water right applications for uses other than stock water.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 7th day of
April, 1997.