

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

IN THE MATTER OF APPLICATION 63229 )  
FILED TO APPROPRIATE THE PUBLIC WATERS )  
FROM AN UNDERGROUND SOURCE WITHIN )  
PATTERSON VALLEY GROUNDWATER BASIN )  
(202), LINCOLN COUNTY, NEVADA. )

RULING  
**# 4671**

GENERAL

I.

Application 63229 was filed on July 7, 1997, by the United States of America, Department of Interior, Bureau of Land Management to appropriate 0.0015 cubic feet per second of underground water from the Patterson Valley Groundwater Basin, Lincoln County, Nevada, for wild horses and wildlife watering purposes within the SE¼ SW¼ of Section 20, T.3N., R.67E., M.D.B.&M.<sup>1</sup> The proposed point of diversion is described as being located within the SE¼ SW¼ of said Section 20.

II.

Application 63229 was timely protested by the Lincoln County Public Lands Commission on the following grounds:

1. We don't feel it is necessary or appropriate for any federal agency to hold water rights in the State of Nevada.
2. Current Nevada Water Law prohibits this type of filing.
3. The Nevada State Water Engineer traditionally has not held the opinion that wild horses are a beneficial use of the water.
4. Technically the protection and provision for wildlife has been under the direction of the Nevada Department of Wildlife and is where we feel it should remain.

It appears that the federal agencies are trying to breach Nevada water law and we oppose any efforts to create the precedent that endangers Nevadan's water protections under the law. Protection of valid existing rights, future needs of Nevadans should be the prime concern, not the federal need to control -- no matter what it is but especially in the issue of water. Nevada is the best entity to control Nevada's water rights, it

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<sup>1</sup> File No. 63229, official records in the office of the State Engineer.

provides for protection of citizens' [sic], their rights and their future needs.

Therefore, the protestant requested that the application be denied.

#### 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. The State Engineer finds a hearing is not necessary to consider the merits of the protest filed by the Lincoln County Public Lands Commission.

##### II.

The protestant does not feel it is necessary or appropriate for any federal agency to hold water rights in the state of Nevada. The State of Nevada has long advocated that federal agencies must recognize and comply with state water law.<sup>2</sup> Nevada water law provides that any person who wishes to appropriate the public waters may file an application to do so<sup>3</sup>, and "person" is defined in the statutes to include the United States as an entity entitled to file a water right application.<sup>4</sup> The State Engineer finds that the United States, Department of Interior, Bureau of Land Management is a person under the provisions of Nevada water law entitled to file an application to appropriate the public waters of the state for wild horses and wildlife watering purposes.

##### III.

The protestant alleges that current Nevada water law prohibits this type of filing. NRS § 533.030 provides that water in Nevada

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<sup>2</sup> State Engineer's Ruling No. 3242, p. 21, dated October 4, 1985, official records in the office of the State Engineer.

<sup>3</sup> NRS § 533.325.

<sup>4</sup> NRS § 533.010, 534.014.

may be appropriated for beneficial use, and the Nevada Legislature has recognized the public benefit in uses of water other than the historical beneficial uses of irrigation, mining, municipal, etc. NRS § 533.023 provides that use of water for wildlife purposes includes the watering of wildlife and the establishment and maintenance of wetlands, fisheries and other wildlife habitats. The Nevada Supreme Court in State, Board of Agriculture v. Morros<sup>5</sup> held that wildlife watering is encompassed in the NRS § 533.030 definition of recreation as a beneficial use of water.

In 1995, the Nevada Legislature passed Senate Bill 96, codified as NRS § 533.503, which provides that the State Engineer shall not issue a permit to appropriate water for watering livestock on public lands unless the applicant for the permit is legally entitled to place the livestock on those public lands for which the permit is sought. The water right sought here is not for livestock in the ordinary sense of livestock watering. Wild horses are much more akin to wildlife than livestock. Livestock are raised by ranchers for the purpose of marketing some product from said stock, i.e., meat, wool, milk, leather, calves, etc. Wildhorses on the other hand are more like deer or bison in that they are owned by no one and are not raised for a particular purpose.

The State Engineer can find no basis or foundation that would dictate a finding that the United States may not appropriate water for the wild horses or wildlife purposes filed for, and finds that Nevada water law does not prohibit the uses filed for under this application.

#### IV.

The protestant alleges that former State Engineers traditionally have held the opinion that the watering of wild horses is not a beneficial use of water, and that technically the protection and provision for wildlife has been under the direction

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<sup>5</sup> 104 Nev. 709 (1988).

of the Nevada Department of Wildlife and that is where the protestant feels it should remain. The State Engineer finds that he is not aware of former opinions that the watering of wild horses is not a beneficial use of water, and finds that it is a beneficial use of water. The State Engineer finds that while the Nevada Division of Wildlife has statutory duties related to wildlife, this does not preclude the United States from requesting an appropriation of water to serve that beneficial purpose on federal lands.

V.

The protestant alleges that it appears that the federal agencies are trying to breach Nevada water law, and alleges that the protection of valid existing rights, and future needs of Nevadans should be the prime concern. The United States through this application is complying with state law for the appropriation of water just as any other citizen would be required to do. As previously noted, the State of Nevada has long advocated that federal agencies must recognize and comply with state water law.

It is conceivable that a junior appropriator might have his application denied or his right curtailed to protect a senior right held by a federal agency. That, of course, is the essence of prior appropriation and protection of existing rights. To deny the federal applications in favor of private speculation on future demands and availability of water for irrigation, mining, municipal or any other uses, would not only violate the doctrine but place the same burden on the private appropriator.<sup>6</sup>

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Nevada, like other western states, has staunchly defended her right to control and administer her most vital resource, but the public interest is not served by impeding congressionally mandated resource management by federal agencies, especially if those agencies recognize and comply with state water law.

Nevada has a limited, finite quantity of water to serve all purposes, and that meager supply is being subjected to

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<sup>6</sup> State Engineer's Ruling No. 3242, pp. 21-22, dated October 4, 1985, official records in the office of the State Engineer.

ever increasing competitive demands. This is nothing new. It has been the "name of the game" since appropriative water law was adopted in the western states. Because the water is scarce, it is an important principle of public policy that all the water be applied to beneficial use.<sup>7</sup>

The State Engineer finds that the development of the water source contemplated by the United States is a beneficial use of water, will not interfere with existing rights, and will not threaten to prove detrimental to the public interest. The United States must be treated with the same respect as all other prior appropriators. Nothing in Nevada water law requires, much less authorizes, the State Engineer to engage in speculation that some undefined future use may be more beneficial or more in the public interest than the beneficial use contemplated under the application at issue.

#### VI.

The State Engineer finds there is unappropriated water available from the source applied for under this application.

#### CONCLUSIONS

##### I.

The State Engineer has jurisdiction over the subject matter of this action and determination.<sup>8</sup>

##### II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where<sup>9</sup>:

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

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<sup>7</sup> Id. at 31-32.

<sup>8</sup> NRS Chapters 533 and 534.

<sup>9</sup> NRS Chapter 533.370(3).

III.

The State Engineer concludes there is unappropriated water available in the source, the proposed use will not conflict with existing rights and does not threaten to prove detrimental to the public interest.

IV.

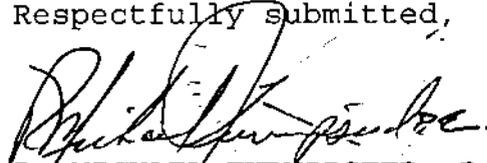
The State Engineer concludes there is no basis or foundation under applicable law to support the position of the protestant.

**RULING**

The protest to Application 63229 is hereby overruled and Application 63229 approved subject to:

1. payment of the statutory permit fees;
2. all other existing rights.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJT/cl

Dated this 23rd day of  
October, 1998.