

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

IN THE MATTER OF APPLICATION 65972 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE CONTINENTAL LAKE VALLEY )  
HYDROGRAPHIC BASIN (02), HUMBOLDT )  
COUNTY, NEVADA. )

RULING  
**# 5329**

GENERAL

I.

Application 65972 was filed on February 1, 2000, by the Denny Land & Cattle Company, LLC, to appropriate 0.0093 cubic feet per second of water from an underground source for stockwatering purposes within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 16, T.46N., R.28E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 16.<sup>1</sup>

II.

Application 65972 was timely protested by the U.S.D.I., Bureau of Land Management (BLM) on the following grounds:<sup>1</sup>

The application is for a stockwater well located on public land, managed by the Winnemucca District of the BLM. The applicants have not received authorization to develop the range improvement project in question. Authorization for this project will not be considered until such time that the pending litigation, involving SB96, is resolved.

FINDINGS OF FACT

I.

Nevada Revised Statutes § 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 the BLM.

<sup>1</sup> File No. 65972, official records in the Office of the State Engineer.

## II.

Nevada Revised Statute § 533.503 provides that the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock on the public lands unless the applicant for the permit is legally entitled to place livestock on the public lands for which the permit is sought. On February 15, 2000, the State Engineer's office sent a letter to the BLM requesting information as to the permittee, the current range users if different than the permittee, name of the range allotment, kind and number of animals and period of use under the range allotment for each parcel of land described in Application 65972. For nearly two years, no response was received from the BLM. On January 30, 2002, the BLM's Winnemucca Field Office was contacted by telephone. On that date, BLM's Craig Drake indicated that the Denny Land and Cattle Company is the current range permittee for the point of diversion and place of use of Application 65972.<sup>1</sup> The State Engineer finds that the applicant is entitled by the proper federal agency to place livestock upon the public range described under Application 65972.

## III.

Application 65972 was protested by the BLM, in part, on the grounds that the applicant has not received authorization to develop the range improvement project in question. Any water right permit issued under Application 65972 would not extend to the permittee the right of ingress and egress on public, private, or corporate lands, and would not waive any permitting requirements by other State, Federal, and local agencies. The State Engineer finds that federal-permitting and access requirements would not be annulled by the issuance of a water right permit.

## IV.

A determination was made, after an examination of the records of the Office of the State Engineer, that there are no additional water right permits, proofs or claims filed at the proposed point of diversion.<sup>2</sup> The State Engineer finds that the approval of Application 65972 would not conflict with existing water rights.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</sup>

<sup>2</sup> Water Rights Township Plats, Township 46 North, Range 28 East, M.D.B.&M., official records in the Office of the State Engineer.

<sup>3</sup> NRS chapters 533 and 534.

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</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.

**III.**

The State Engineer concludes that stockwatering is a beneficial use and the applicant is the current range user of the federal grazing allotment; therefore, the approval of Application 65972 would not threaten to prove detrimental to the public interest.

**IV.**

The State Engineer concludes there is unappropriated water at the source and the proposed use will not conflict with existing rights.

**RULING**

The protest to Application 65972 is hereby overruled and said application is approved subject to existing rights and the payment of the statutory permit fees.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 26th day

of February, 2004.

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<sup>4</sup> NRS § 533.370 (3).