

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

IN THE MATTER OF APPLICATIONS)
44793, 44797, 44798, 44814, 61364,)
61992 AND 61993, FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE)
WITHIN PARADISE VALLEY (69),)
THE QUINN RIVER VALLEY (33A),)
AND LITTLE HUMBOLDT VALLEY)
(67) HYDROGRAPHIC BASINS,)
HUMBOLDT COUNTY, NEVADA.)

RULING

#5442

GENERAL

I.

Application 44793 was filed on October 29, 1981, by the Bureau of Land Management, Winnemucca District, to appropriate 0.025 cubic feet per second (cfs) of water from Miller Well, an underground source, for stockwatering purposes within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T.39N., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 4.¹

II.

Application 44797 was filed on October 29, 1981, by the Bureau of Land Management, Winnemucca District, to appropriate 0.025 cfs of water from Paradise Well, an underground source, for stockwatering purposes within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T.40N., R.38E., 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 34.²

III.

Application 44798 was filed on October 29, 1981, by the Bureau of Land Management, Winnemucca District, to appropriate 0.03 cfs of water from Provo Creek Well, an underground source, for stockwatering purposes within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of

¹ File No. 44793, official records in the Office of the State Engineer.

² File No. 44797, official records in the Office of the State Engineer.

Section 3, T.40N., R.39E., 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 said Section 3.³

IV.

Application 44814 was filed on October 29, 1981, by the Bureau of Land Management, Winnemucca District, to appropriate 0.025 cfs of water from Lewellan Well, an underground source, for stockwatering and domestic purposes within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, and the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, all located within T.44N., R.37E., 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 said Section 26.⁴

V.

Application 61364 was filed on June 30, 1995, by the United States of America Bureau of Land Management and the T Quarter Circle Ranch, Inc., to appropriate 0.008 cfs of water from Sand Pass Well, an underground source, for stockwatering purposes within Lot 2, Section 4, T.37N., R.38E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 2 of said Section 4.⁵

VI.

Application 61992 was filed on April 2, 1996, by the United States Government, Bureau of Land Management and Talancon and Lopez to appropriate 0.0093 cfs of water from an underground source, for stockwatering purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T.40N., R.41E., 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 said Section 6.⁶

VII.

Application 61993 was filed on April 2, 1996, by the United States Government, Bureau of Land Management and Talancon and Lopez to appropriate 0.0093 cfs of water from an underground source, for stockwatering purposes within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, T.40N., R.41E., 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 said Section 17.⁷

³ File No. 44798, official records in the Office of the State Engineer.

⁴ File No. 44814, official records in the Office of the State Engineer.

⁵ File No. 61364, official records in the Office of the State Engineer.

⁶ File No. 61992, official records in the Office of the State Engineer.

⁷ File No. 61993, official records in the Office of the State Engineer.

VIII.

Applications 44793, 44797, 44798 and 44814 were timely protested on grounds not considered in this ruling.^{1,2,3,4}

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 of the State of Nevada. The State Engineer finds the protests to Applications 44793, 44797, 44798 and 44814 are not being considered by this ruling; therefore, a hearing is not necessary.

II.

In 2003, the Nevada Legislature amended NRS § 533.503 to provide, in part, that:

The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless:

- (a) The applicant for the permit is legally entitled to place the livestock on the lands for which the permit is sought, and:
 - (1) Owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought; or
 - (2) Has received from a person described in subparagraph (1), authorization to have physical custody of the livestock on or to be placed on the lands for which the permit is sought, and authorization to care for, control and maintain such livestock;
- (b) The forage serving the beneficial use of the water to be appropriated is not encumbered by an adjudicated grazing preference recognized pursuant to law for the benefit of a person other than the applicant for the permit; and
- (c) The lack of encumbrance required by paragraph (b) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit, that is issued by the appropriate governmental entity to the applicant for the permit.

The law clearly states that the State Engineer shall not issue a permit to appropriate water for livestock unless the applicant owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought.

The State Engineer finds the BLM does not own, lease or otherwise possess a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought and is therefore not qualified to obtain a stockwater permit under Nevada Water Law.

III.

Applications 61364, 61992, and 61993 were filed jointly between private individuals and the BLM. The State Engineer finds that when an application is filed jointly, all parties on the joint application must meet the provisions of NRS § 533.503. Since the State Engineer has already found the BLM is not qualified to obtain a stockwater permit, the State Engineer finds that joint Applications 61364, 61992, and 61993 cannot be approved.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁹

- 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 threatens 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 livestock, unless the applicant owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought, and since the BLM does not meet this requirement, the subject applications must be denied in accordance with NRS § 533.503.

⁸ NRS chapters 533 and 534.

⁹ NRS § 533.370(4).

RULING

Applications 44793, 44797, 44798, 44814, 61364, 61992, and 61993 are hereby denied under the provisions of NRS § 533.503. No ruling is made on the merits of the protests.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 26th day of

October, 2004.