

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

IN THE MATTER OF APPLICATION 44970)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE INDEPENDENCE VALLEY)
(PEQUOP VALLEY), HYDROGRAPHIC BASIN)
(188), ELKO COUNTY, NEVADA.)

RULING

5552

GENERAL

I.

Application 44970 was filed on October 29, 1981, by the Bureau of Land Management (BLM) to appropriate 0.01 cubic feet per second of water from Nine Mile Well, an underground source, for stockwater purposes within the E½ SE¼ of Section 1, T.32N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SE¼ of said Section 1.¹

II.

Application 44970 was timely protested on grounds not considered in this ruling.¹

FINDINGS OF FACT

I.

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 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

¹ File No. 44970, official records in the Office of the State Engineer.

- (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 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.

II.

Application 44970 was filed for stockwater purposes. Under Item #4(b) of the application, the applicant listed 100 cattle, 26 antelope and 2,000 sheep. In the remarks section the applicant also stated, “[W]ater will be accessible at the source for wildlife that customarily use this water.” A water right application may only be filed for one purpose;² however, it is not uncommon for an applicant to note wildlife use on a stockwater application. Absent of any physical restrictions, wildlife will water at various water sources within their range independent of ownership or the stated beneficial use of a water right. If water is available, the wildlife may or may not choose to water at a particular source and the use may be consistent or sporadic depending on numerous environmental factors. In the case of an underground source of water being pumped to the surface for use by livestock, the water is simultaneously available for various wildlife. If water is needed at this particular point of diversion for wildlife, at times when water is not being diverted for livestock, a separate application may be filed for wildlife purposes.

The State Engineer finds that the application before him requests an appropriation of underground water for stockwater purposes, as the one purpose allowed under NRS § 533.330, and that any need for an appropriation of additional water from this well site for wildlife purposes can be requested through the submittal of a water right application for such purpose.

CONCLUSIONS

I.

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

² NRS § 533.330.

³ NRS chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- 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 Application 44970 was filed for stockwater purposes.

IV.

The State Engineer concludes that the applicant does not meet the requirements of NRS § 533.503; therefore, the application is subject to denial.

RULING

Application 44970 is hereby denied under the provisions of NRS § 533.503. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 31st day of

January, 2006.

⁴ NRS § 533.370(4).