

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

IN THE MATTER OF APPLICATION )  
44121 FILED TO APPROPRIATE THE )  
PUBLIC SURFACE WATERS OF HORSE )  
CREEK WITHIN THE DIXIE VALLEY )  
HYDROGRAPHIC BASIN (128), )  
CHURCHILL COUNTY, NEVADA. )

RULING

**#5587**

GENERAL

I.

Application 44121 was filed on June 30, 1981, by Horse Creek Ranch to appropriate 10.0 cubic feet per second of surface water from Horse Creek in the Dixie Valley Hydrographic Basin for the irrigation of 320 acres of land within portions of the N $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 3, the N $\frac{1}{2}$  SE $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$ , NW $\frac{1}{4}$  of Section 4, and the N $\frac{1}{2}$  SE $\frac{1}{4}$  and NE $\frac{1}{4}$  of Section 5, T.19N., R.35E., 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 12, T.19N., R.35E., M.D.B.&M.<sup>1</sup>

II.

Application 44121 was timely protested by Frank W. Lewis on the grounds that the waters of Horse Creek are already fully appropriated and that granting the application would impair existing rights.<sup>1</sup>

III.

On August 22, 1988, the Department of the Navy, NAS-Fallon, notified the Office of the State Engineer that they were the successor-in-interest to Application 44121, and that the Navy intended to put the land and associated water rights to beneficial use through a Soil and Water Conservation Plan it was developing at that time.

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<sup>1</sup> File No. 44121, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

NAS-Fallon was informed by letter dated March 9, 1999, that the owner of record of Application 44121 was still Horse Creek Ranch and that the chain of title would need to be submitted to allow conveyance of title and interest in Application 44121 into the name of the United States of America. NAS-Fallon was requested to submit this information by May 9, 1999. The State Engineer finds no reply or documentation has been received in response to the May 9, 1999, request and ownership of Application 44121 remains in the name of Horse Creek Ranch.

II.

Application 44121 was filed to appropriate surface water for use upon land that was to be removed from the federal domain through the approval of the applicant's respective Desert Land Entry Application. On April 27, 2005, the United States Department of the Interior, Bureau of Land Management (BLM), Winnemucca Office was contacted by telephone to provide information to the Office of the State Engineer relating to the current status of the Horse Creek Ranch Desert Land Entry Application. The BLM indicated that neither the Horse Creek Ranch nor NAS-Fallon had ever applied for a Desert Land Entry. Charles C. Chisholm, whose name appears on Application 44121 as a member of the Horse Creek Ranch co-partnership, was granted a small land patent within Section 3, T.19N., R.35E., M.D.B.&M., but not within the place of use as described under Application 44121. The State Engineer finds that no Desert Land Entry application was ever made by the applicant to gain control of the place of use described under Application 44121.

III.

A water right application is filed to request an appropriation of water to be used for a specific purpose within a well defined place of use, which is represented under Application

44121 as the irrigation of 320 acres of land, which were to be removed from federal jurisdiction by the approval of the applicant's Desert Land Entry Application. Horse Creek Ranch has never made a Desert Land Entry Application. The State Engineer finds that the purpose for which Application 44121 was filed does not exist; therefore, the necessity to divert water as proposed under the subject application does not exist.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>2</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>3</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.

Application 44121 was filed in support of Desert Land Entry. No Desert Land Entry application was ever made to gain control of the place of use described under Application 44121; therefore, the applicant does not own or control the land described as the place of use under the application and cannot demonstrate the ability to place the water to beneficial use.

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<sup>2</sup> NRS chapter 533.

<sup>3</sup> NRS § 533.370(4).

IV.

The State Engineer concludes that the purpose for which Application 44121 was filed does not exist and the necessity to divert water as proposed under the subject application does not exist; therefore, its approval would threaten to prove detrimental to the public interest.

RULING

Application 44121 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/WHR/jm

Dated this 13th day of  
March, 2006.