

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

IN THE MATTER OF APPLICATION 44832)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE GRANITE SPRINGS VALLEY)
HYDROGRAPHIC BASIN (78), PERSHING)
COUNTY, NEVADA.)

RULING

#5753

GENERAL

I.

Application 44832 was filed on October 29, 1981, by the Bureau of Land Management, Winnemucca District and was later assigned to C Punch Ranch, Inc., to appropriate 0.025 cubic feet per second of water from Vernon Well for stockwater, wild horses and domestic purposes within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, T.28N., R.28E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 8. Item #4(b) of the application further lists the proposed use as 222 cattle, 420 sheep and 139 wild horses.¹

II.

Application 44832 was timely protested by Star Sheep Company – Bob Belzarena on the following grounds:¹

1. Beneficial use is the basis measure and limit of the right to use water. (NRS 533.035) Beneficial use refers to the amount of water actually applied by the appropriator to use. Appropriation must be coupled with the act of applying the water to a beneficial use recognized by Nevada. The United States does not own livestock or wildlife and so it is impossible for the United States to actually apply the water to beneficial use. In the case of livestock, only the person who owns or controls the livestock can apply the water to beneficial stockwater use and in the case of wildlife, only the State of Nevada can apply the water to wildlife use, whether on private lands or public lands.
2. The United States has no necessity for the use of the water applied for. The person who owns or controls the livestock has the necessity to water the livestock; and the State of Nevada has the

¹ File No. 44832, official records in the Office of the State Engineer.

- necessity to water the wildlife. The U.S. therefore, is not permitted to use the waters under Nevada law. (NRS 533.045)
3. The Protestant is informed and believes that it has vested rights to use the water for stockwater purposes to the extent that to grant the application would impair the vested rights of the Protestant.
 4. No application shall be for water to be used for more than one purpose. (NRS 533.330) The U.S. applications include both livestock and wildlife use.
 5. NRS 533.340 requires that the application contain, if for stockwatering purposes, the approximate number and character of animals to be watered. If the application does not contain that information, it is defective. This statute does not list wildlife as a use specifically requiring application and appropriation.
 6. The applications are detrimental to the public welfare. If granted they will undermine the sovereign control of the State of Nevada over wildlife by giving the United States Government control of the water sources for wildlife. Appropriating stockwater use to the U.S., which owns no livestock, will prevent Nevada residents and bona fide appropriators from appropriating stockwaters that may be available or become available through water development to water additional livestock in the future which may be grazed if forage increases. By granting the United States its appropriation, the State of Nevada is thereby delegating to the U.S. the right to determine how many livestock will use the Nevada public waters on each water source involved. In the event that the public lands upon which the water source is located, would be returned or transferred to the State of Nevada, this would create serious ownership and management problems for the State of Nevada. The State of Nevada would own the lands but the U.S. government would have water right appropriations on the water sources on the lands and no use for such water. The application threatens to prove detrimental to the public interest. The proposed use or change that would result from granting the application conflicts with existing rights of the Protestant and would grant the U.S. the authority to reduce the Protestant's stockwater use on the water source and replace it with use by some other livestock owner or operator, or with other beneficial use contrary to the long established water law of the State of Nevada and without the State of Nevada exercising its jurisdiction over the water. NRS 533.370 requires the rejection of the application by the State Engineer.
 7. The Protestant has a subsisting right to water range livestock at the place and source applied for and in sufficient numbers to utilize substantially all that portion of the public range readily available to livestock watering at the place and source. Therefore, pursuant to NRS 533.495, the application must be denied.

8. Wildlife use is a natural use which does not require appropriation by any entity for the benefit of the wildlife.
9. The water of all sources in Nevada belong to the public. (NRS 533.025) Granting of the application will surrender this public ownership and the sovereign rights of the State of Nevada in and to the water, to the United States Government contrary to the best interests and the general welfare of the State of Nevada.
10. Granting the application would give the United States the authority and the opportunity to take from the Protestant, without compensation, property of the Protestant in the form of water development, water development improvements and costs and stockwater use that have been applied to the water source by the Protestant.
11. Granting the application would place the U.S. Government in the position of being able to charge fees and licenses for the use of Nevada's water through the licensing of livestock grazing.
12. Granting the application could give the U.S. Government the legal basis upon which to dictate to the State of Nevada the numbers and types of wildlife that could use the water source and their seasons of use. Thereby interfering with the jurisdiction of the Nevada Department of Fish and Game.
13. Consent of the State of Nevada to the acquisition by the United States of America for such water rights has not been given as required by Nevada Revised Statutes 328.030 through 328.150.
14. The historical use of the water source for stock purposes has made such water appurtenant to the Protestant's ranch through a vested right or appropriation. After Protestant's use is satisfied there may be no unappropriated water.
15. The source of the water applied for is on private lands owned or controlled by Protestant and the U.S. applicant has no legal access to the water source or right to use Protestant's lands to make use of the water.
16. The Protestant caused or contributed to the drilling and development of the well and in using the water for stockwatering purposes. There may not be enough water to satisfy Protestant's present and future needs and those applied for. Permitting others to use the water through BLM licensing would require the taking or using of Protestant's property without compensation.
- *17. There are no so-called wild horses or burros legally in the area and no water should be appropriated for their use.
- *17. The numbers of so-called "wild horses" to be watered under this application are in excess of those permitted by law and the use should be reduced.
- *18. Provisions unique to each ranch are:

Water rights are personal property rights and have a market value. By holding a water right, the Federal Government, in effect, owns rights not constitutionally intended by the framers of our Constitution. The Federal Government unfairly competes with the private citizen for these rights by using our own tax monies to acquire the water rights.

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 that sufficient information is available in the Office of the State Engineer and an administrative hearing to obtain additional evidence is not necessary.

II.

Bureau of Land Management (BLM) ownership of water rights for stockwater use constitutes a large portion of the protest issues. Application 44832 was originally filed by the BLM in 1981 and the application was timely protested by the Star Sheep Company. The Star Sheep Company was the current range user at the time of the protest. Subsequently, C Punch Ranch Inc. has become the new range user for this grazing allotment. On March 1, 2007, ownership of Application 44832 was transferred to the current range user, C Punch Ranch, Inc.¹

The Protestant's lack of interest in this matter was previously confirmed as far back as 1994. On June 24, 1994, the Office of the State Engineer attempted to contact the Protestant in regards to a potential administrative hearing. The letter to the Protestant was returned by the United States Postal Service stamped, "Not Deliverable as Addressed" and "Unable to Forward." On August 28, 2003, the Office of the State Engineer again attempted to contact the Protestant by certified mail. The Protestant was warned that failure to reply would be taken as an expression that he no longer has an interest in pursuing the protest. A properly endorsed certified mail receipt was received from the United States Postal Service on September 2, 2003; however, to date, there has been no response from the Protestant.

The State Engineer finds that with the transfer of ownership from the BLM to the current range user, C Punch Ranch, Inc., the protest issues have been rendered moot. The State Engineer further finds that the Protestant has expressed no interest in pursuing the protest.

III.

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

1. 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.

A review of the application file shows that C Punch Corporation is the authorized range user as permitted by the BLM via the issuance of a grazing permit. The State Engineer finds that the Applicant is the authorized range user and is legally entitled to place livestock on the lands for which the water right permit is sought.

IV.

Application 44832 requests water for livestock, wild horses and domestic use. The standard duty for cattle and horses is 20 gallons per day per head and the standard duty for sheep is 4 gallons per day per head. A review of the application shows that the total amount of water requested is minimal. The State Engineer finds that the quantity of water requested in this application is minimal and approval of such a small quantity

would not impair existing ground-water rights in the Granite Springs Valley Hydrographic Basin.

V.

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 for the proposed water source for Application 44832.²

The State Engineer finds neither Protestant Star Sheep Company nor any other party has a valid water right or application at the proposed point of diversion of Application 44832.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under a permit to appropriate the public water 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 or change threatens to prove detrimental to the public interest.

III.

Application 44832 requests a minimal quantity of underground water from the Granite Springs Valley Hydrographic Basin. The State Engineer concludes that there is unappropriated water at the source sufficient to satisfy the minimal requirements of the requested appropriation and said appropriation will not conflict, interfere with, nor impair the value of existing rights.

² Water Rights Database, Hydrographic Abstract, official records in the Office of the State Engineer.

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(5).

IV.

Application 44832 was filed for stockwater, wild horses and domestic purposes. The Applicant meets the requirements of NRS § 533.503; therefore, the application is subject to approval for stockwater purposes. The State Engineer concludes that there is no evidence to indicate approval of a permit under Application 44832 would threaten to prove detrimental to the public interest.

V.

The protest to Application 44832 was based on BLM ownership of water rights; particularly stockwater, wild horses and wildlife. The BLM transferred ownership of these applications to the authorized range user, C Punch Ranch, Inc. The State Engineer concludes that with the transfer of ownership the protest issues have been rendered moot and therefore, the protest may be overruled.

VI.

The Office of the State Engineer attempted to contact the Protestant at the address provided on the protest form. To date, the Protestant has failed to respond. A review of the application file failed to locate any correspondence from the Protestant since the protest was filed, over 25 years ago.

The State Engineer concludes that the apparent lack of interest by the Protestant allows the protest to be overruled.

VII.

Application 44832 was filed for stockwater, wild horses and domestic purposes. Specifically, the application lists 222 cattle, 420 sheep and 139 wild horses. A water right application may only be filed for one purpose.⁴

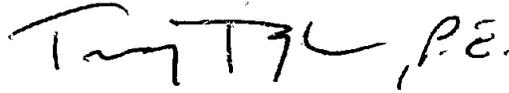
The State Engineer concludes Application 44832 can be approved for one primary purpose and in this instance that will be stockwatering since the Applicant is an authorized range user.

⁴ NRS § 533.330.

RULING

The protest to Application 44832 is overruled and the application is hereby approved for stockwatering purposes subject to existing rights.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TW/jm

Dated this 27th day of

July, 2007.