

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

IN THE MATTER OF APPLICATION 68886 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF A SURFACE SOURCE IN )  
THE SWAN LAKE VALLEY )  
HYDROGRAPHIC BASIN (007), WASHOE )  
COUNTY, NEVADA. )

**RULING**

**#5862**

**GENERAL**

**I.**

Application 68886 was filed on June 10, 2002, by Tim Lawson to appropriate 0.17 cubic feet per second (cfs), not to exceed 120 acre-feet annually of the water from an unnamed spring to irrigate 30 acres of land within the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$ , and SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 14, T.44N., R.22E., M.D.B.&M. The proposed point of diversion is a spring described as being located within SW $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 14.<sup>1</sup>

**II.**

Application 68886 was timely protested by Bill and Linda Kennedy, owners of Permit 62538, on the following grounds:<sup>1</sup>

Our water right application 62538 filed October 25, 1996, comes from the same channel as Mr. Lawson requested water right. Mr. Lawson has already impaired our ability to withdraw our allotment with the installment of two solar water pumps. We request that your office have these pumps removed.

**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 evidence is available in the Office of the State Engineer to evaluate the merits of Application 68886 and a hearing is not necessary.

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<sup>1</sup> File No. 68886, official records in the Office of the State Engineer.

## II.

A field investigation was conducted on October 28, 2003, by staff of the Division of Water Resource. The field investigation made six stops. The stops were along Badger Creek, an intermittent stream that flows generally northward. It is noted in the field investigation report that the Applicant does not intend to increase the natural demand on the water from the spring or subsurface flow along Badger Creek. The Applicant intends to utilize the water to maintain the meadow in its current condition and wants to insure that no other party files to remove this source of water for the meadow. Report of Field Investigation No. 1062 states the following:<sup>2</sup>

1. A flow of 0.08 cfs was observed at the proposed point of diversion of protested Application 68886. This flow originates from a spring near the proposed POD [point of diversion] and possibly from subsurface flow along the Badger Creek stream channel.
2. Two (2) solar pumps were observed. They are designed to pump a small amount of water to troughs located away from the stream channel. No permits are in place for either solar pump.
3. It cannot be (was not) determined if any of the flows at the proposed point of diversion of Application 68886 reaches the storage pond of Permit 62538.
4. Use of application 68886 to maintain meadow areas along Badger Creek in their current condition should have no impact on water consumption by the meadows.
5. The letter by the agent for Permit 62538 indicates that the flow entering the storage pond is 0.5-1.0 cfs, which exceeds the total amount of water under Permit 62538 and Application 68886.

The field investigation evidence was inconclusive regarding whether Application 68886 would conflict with the Protestant's existing water right, Permit 62538. However, anytime an Applicant requests an appropriation of water upstream of an existing water right on the same stream system, the potential for conflict exists. Although the Applicant has indicated that there is no intent to change the natural system of the spring and meadow area, once a permit for irrigation is issued,

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<sup>2</sup> See, Report of Field Investigation No. 1062, January 27, 2004, File No. 68886, official records in the Office of the State Engineer.

there are no restrictions on the crop that can be grown or the improvements that may be made in the future. It is impossible to predict what the Applicant, or a successor to the Applicant, may do to the spring or meadow area in the future.

The State Engineer finds that the proposed use would conflict with the existing water rights of the Protestant.

### III.

When considering an application to appropriate water for irrigation purposes, the Office of the State Engineer examines the surveyed description on the application and the application's supporting map to determine the precise location of the land. Once the location of the land is verified, the next step is to determine the ownership of the land. The ownership of the land can be determined through the county assessor's office. In this case, the land is wholly located within Washoe County. According to information obtained from the Washoe County Assessor's Office, the proposed place of use is public land managed by the United States Bureau of Land Management (BLM). This information is confirmed by the Applicant's letter of January 28, 2003, which also states that the spring and meadow areas are located on BLM land.<sup>3</sup> A review of the application file fails to show any authorization for the Applicant to access this land for the purposes of irrigation.

The State Engineer finds that the Applicant does not own or control the proposed point of diversion and place of use; thus, has no authority to place the water to beneficial use at the proposed place of use.

### IV.

The State Engineer finds the Applicants have no legal authorization to operate two solar pumps and said pumps must be removed.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>4</sup>

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<sup>3</sup> File No. 68886, official record in the Office of the State Engineer.

<sup>4</sup> NRS chapter 533.

**II.**

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>5</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 the Applicant does not own or control the proposed point of diversion and place of use and to issue a permit under these circumstances would threaten to prove detrimental to the public interest.

**IV.**

The State Engineer concludes the proposed use would conflict with the Protestant's existing water rights.

**RULING**

The protest is upheld and Application 68886 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest and conflict with existing rights.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/TW/jm

Dated this 26th day of  
June, 2008.

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<sup>5</sup> NRS 533.370(5).