

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

IN THE MATTER OF APPLICATION)
70906 FILED TO APPROPRIATE THE)
PUBLIC WATERS FROM SURFACE)
WATER SOURCE WITHIN THE)
RAILROAD VALLEY-NORTHERN)
PART HYDROGRAPHIC BASIN (173-)
B), NYE COUNTY, NEVADA.)

RULING
589 4

GENERAL

I.

Application 70906 was filed on March 1, 2004, by RWD Current Creek, LLC., to appropriate 0.012 cubic feet per second of water from Silver Spring for stockwatering purposes within the SE $\frac{1}{4}$ of Section 6, the NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Lots 3 and 4 of Section 7, Lots 1 and 2 of Section 18, T.11N., R.58E., M.D.B.&M., and the SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T.11N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T.11N., R.58E., M.D.B.&M.¹

II.

Application 70906 was timely protested by Jeanne A. Evenden, Director of Lands for the U.S. Forest Service on May 12, 2004, on grounds that:

The applicant will not be able to develop the water without Forest Service authorization. The stated point of diversion is located on National Forest System lands. The applicant has no authorization or permit to occupy nor to develop diversion and conveyance facilities on or across National Forest System lands necessary to place the water to beneficial use.

FINDINGS OF FACT

I.

Application 70906 was filed to appropriate surface water from lands administered by the U.S. Forest Service (USFS) and place them to use on lands that

¹ File No. 70906, official records in the Office of the State Engineer.

are administered by the Bureau of Land Management (BLM). An examination of the records in the Office of the State Engineer reveals that there are no other pending, permitted, vested, or reserved water rights on Silver Spring. The State Engineer finds that there are no existing water rights on the source.

II.

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.

The BLM informed the Office of the State Engineer, by letter dated April 30, 2004, that R.W.D. Current Creek, LLC., is an authorized range user for the Silver Springs area of the Duckwater Allotment. The State Engineer finds that the Applicant is legally entitled to place livestock upon the federal lands comprising the place of use under Application 70906.

III.

The USFS informed the Office of the State Engineer, by letter dated February 3, 2006, and by e-mail dated January 24, 2008, that R.W.D. Current Creek, LLC., is not an authorized range user for the Silver Spring area of the Blackrock Cattle and Horse 403 Allotment. The State Engineer finds that the Applicant does not have access to the proposed point of diversion under Application 70906; therefore, cannot place the water to beneficial use.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³

- 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 that the Applicant is the current BLM range user for the place of use described in Application 70906 and is legally entitled to place the livestock on the lands administered by the BLM for which the permit is sought.

IV.

However, the State Engineer also concludes that the Applicant is not a current USFS permittee for the proposed point of diversion under Application 70906 and is not legally entitled to develop a diversion or conveyance facilities on the lands administered by the USFS for which the permit is sought. Therefore, under Nevada

² NRS chapter 533.

³ NRS § 533.370 (5).

Revised Statute § 533.370, it would threaten to prove detrimental to the public interest to approve a permit where the Applicant does not have control over the point of diversion.

RULING

The protest to Application 70906 is hereby upheld and Application 70906 is denied on the grounds that the approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



Tracy Taylor, P.E.
State Engineer

TT/WHR/jm

Dated this 26th day of

September, 2008.