

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

IN THE MATTER OF APPLICATION 44843)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE GRASS VALLEY,)
HYDROGRAPHIC BASIN (71), PERSHING)
COUNTY, NEVADA.)

RULING

5974

GENERAL

I.

Application 44843 was filed on October 29, 1981, by the Bureau of Land Management, Winnemucca District (BLM), to appropriate 0.02 cubic feet per second of water from Copper Search Well for stock-water, wild horses and domestic purposes within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, T.31N., R.38E., and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, T.31N., R.38E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, T.31N., R.38E., M.D.B.&M.¹

II.

Application 44843 was timely protested by the Roaring Springs & Associates on grounds not to be considered in this ruling.¹

FINDINGS OF FACT

I.

Application 44843 was filed for stock-water, wild horses and domestic purposes. Specifically, the application lists 1,300 sheep, 210 cattle, 3 wild horses and domestic use. It should be noted that domestic use, as defined in NRS § 534.013, does not require a water right permit and therefore, may be included in any application with the other use named.² A water right application may only be filed for one purpose;³ however, it was not uncommon in the past for an applicant to indicate on Item #3 of the application both stock-water and wild horses as the one purpose for the application. However, recent stock-water legislation has drawn a clearer distinction between wildlife, wild horses and livestock. The requirements placed upon an

¹ File No. 44843, official records in the Office of the State Engineer.

² NRS § 534.180 and NRS § 533.330.

³ NRS § 533.330.

applicant for a stock-water appropriation are more rigorous than the application requirements for wildlife or wild horse purposes.⁴

The State Engineer finds that the additional criteria required by Nevada water law for any application that lists stock-water as a manner of use, must also be applied to Application 44843.

II.

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

- I. 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 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 stock-water permit under Nevada Water Law.

III.

A review of the proposed point of diversion and place of use show that both are outside of any designated wild horse herd management area. The State Engineer finds to approve an application for wild horses under these circumstances would threaten to prove detrimental to the public interest.

⁴ NRS § 533.503.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- 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.

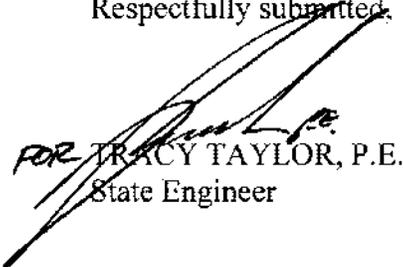
III.

The Applicant does not meet the requirements of NRS § 533.503 for stock-water use. Further, the Application cannot be approved for wild horses as the point of diversion and place of use are outside any designated herd management area. Therefore, the State Engineer concludes that Application 44843 is subject to denial.

RULING

Application 44843 is hereby denied under the provisions of NRS § 533.503 and on the grounds that the proposed use threatens to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



FOR TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 20th day of
April, 2009.

⁵ NRS chapters 533 and 534.

⁶ NRS § 533.370 (5).