

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

IN THE MATTER OF APPLICATION 79261)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE BUENA VISTA)
VALLEY HYDROGRAPHIC BASIN (129),)
PERSHING COUNTY, NEVADA.)

RULING
#6082

GENERAL

I.

Application 79261 was filed on January 28, 2010, by Jim Estill to appropriate 0.012 cubic feet per second of underground water for the stock watering of 385 head of cattle within the NW¼ NW¼ of Section 4, T.26N., R.35E., M.D.B.&M. The proposed point of diversion is described by the Applicant as being located within the NW¼ NW¼ of said Section 4.¹

II.

Application 79261 was timely protested by the Bureau of Land Management (BLM) on the following grounds:¹

This project is not currently an authorized BLM project. There are no cooperative agreements or management plans in place for this project.

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 hearing is necessary to address the merits of a protest to a water right application. The State Engineer finds that in the case of Application 79261, there is no need to supplement the existing records of the Office of the State Engineer with testimony and evidence relating to this application and its associated protest.

¹ File No. 79261, official records in the Office of the State Engineer.

II.

Nevada Revised Statute § 533.503 provides that the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless the applicant for the permit is legally entitled to place livestock on the lands for which the permit is sought.

The proposed point of diversion and place of use described by the Applicant are located within the Rochester Common Allotment. At the request of the Office of the State Engineer, James Estill provided information which verified that he was the current range user associated with this allotment.¹

The State Engineer finds that James Estill is entitled by the BLM to place livestock upon the public range described under the subject application.

III.

Every permit that is issued by the State Engineer contains a set of conditions that establishes the guidelines under which the appropriation of water can occur. Those permits that are issued for appropriations of underground water for stock watering purposes often are conditioned with the provision that the approval of the permit does not waive any requirements that may be imposed by state and federal agencies. Application 79261 was protested on the grounds that there are currently no cooperative agreements or management plans in place for the Applicant's project. The State Engineer finds that Application 79261, if approved, will be approved with the condition that the Applicant will not be released from any obligations that are required from the Bureau of Land Management.

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

² NRS Chapters 533 and 534.

³ NRS § 533.370(5).

- 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 stock watering is a beneficial use and that the Applicant is the current range user, therefore the approval of Application 79261 would not threaten to prove detrimental to the public interest.

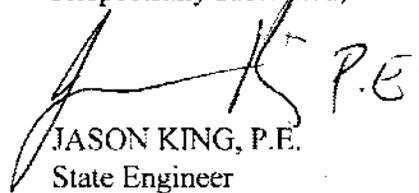
IV.

The proposed point of diversion requested under Application 79261 is an existing well whose waters are not currently appropriated under any valid permitted water right. The State Engineer concludes that the approval of Application 79261 would not conflict with existing water rights that appropriate water from the Buena Vista Valley Hydrographic Basin.

RULING

The protest to Application 79261 is hereby overruled and Application 79261 is approved subject to exiting rights and the timely payment of the statutory permit fee.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 7th day of
December, 2010.