

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 40542)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE IN)
ANTELOPE VALLEY DESIGNATED)
GROUNDWATER BASIN, LANDER COUNTY,))
NEVADA.)

RULING

GENERAL

Application 40542 was filed on February 15, 1980, by Paul Inchauspe to appropriate 0.5 c.f.s. of water from an existing underground source (East Well) for stockwater purposes within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T.22N., R.41E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T.22N., R.41E., M.D.B.&M. The application proposes to serve 500 head of cattle¹

Application 40542 was timely protested by Jim Williams of the American Horse Protective Association on November 6, 1980, on the grounds that:¹

- "1. Stock tanks would prohibit use by the wild horses and animals in this area.
2. Steers/cows overgraze the land due to water being in the area.
3. Just as a rancher a well must not be allowed here."

Therefore the protestant requests that the application be denied.

On December 24, 1980, Application 40542 was protested by Craig C. Downer of the Animal Protection Institute, Inc., on the grounds that:¹

- "1. Would prohibit use by wild horses and other wildlife.
2. Would allow continual deterioration of the area due to overgrazing."

Therefore the protestant requests that the application be denied.

The protest submitted by Craig C. Downer of the American Protection Institute, Inc., on December 24, 1980, was returned to protestant as said protest was not timely filed.²

¹ Public record in the office of the State Engineer.

² NRS 533.365 (1).

FINDINGS OF FACTS

I.

On May 2, 1984, the State Engineer's office requested information from the Bureau of Land Management regarding the current range permittee/user within the described place of use.¹

II.

On July 3, 1984, the State Engineer's office received a letter from the Bureau of Land Management stating that Paul Inchauspe was the authorized range permittee for the place of use described under Application 40542. The grazing right was issued for 1,200 head of cattle from November 1 to June 15 and 4,000 sheep from December 1 to March 15 of each year.¹

III.

Grazing privileges available to farmers and ranchers are primarily determined by discretionary decisions of the land managers, hopefully based on the forage available on the land and on the general conditions of the the range. Forage and range conditions are determined by precipitation, soil, climate and other factors largely independent of the existing or non-existence of watering sources. The quantity of forage is also not likely to be determined by the owner of record on a stockwater permit, however, grazing pressure within a range area is increased and localized in the vicinity of existing water sources where such sources are limited in quantity. The development of additional water source represented by the proposed application to appropriate is perceived as enhancing the general range area for grazing, which in turn should reduce grazing pressure in the vicinity of existing watering sources, thereby increasing the quantity and quality of grazing forage and privileges as a whole.

IV.

On March 9, 1981, the State Engineer's office received a copy of a letter of reply dated March 5, 1981 from the Bureau of Land Management to Craig C. Downer of the American Protection Institute. The letter states that:¹

"Wells are artificial sources of water and are pumped by stockmen only when livestock are in the area. Wild horses and other wild animals have adapted to this long established practice....Private development owners are also encouraged to provide water for wildlife. Rabbits and other wildlife populations are dependent on natural water sources although they do use overflow water from the wells when available."

CONCLUSIONS

I.

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

³ NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁴

- A. There is no appropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

III.

Beneficial use shall be the basis, the measure and the limit of the right to the use of water.⁵

IV.

The applicant under Application 40542 is the authorized range permittee within the described place of use, and therefore has sufficiently demonstrated the ability and necessity to divert water for a beneficial use under the proposed application for stockwatering which is also considered to be a preferred use of the ground water resource within the Antelope Valley Ground Water Basin.

V.

The granting of an application on an existing well currently used by the applicant for stockwater would not introduce nor create a new grazing pressure in the vicinity of the water source. The number of cattle proposed to be served is an amount less than authorized by the Bureau of Land Management.

VI.

There are currently no existing rights on the proposed source nor are there any existing rights within one mile of the proposed source of record in the State Engineer's office.

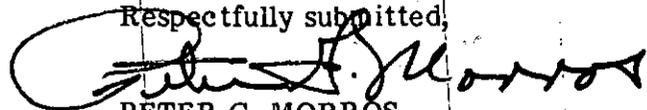
⁴ NRS 533.370 (2).

⁵ NRS 533.035

RULING

The protest to the granting of Application 40542 is hereby overruled on the grounds that the applicant is the authorized range permittee and can demonstrate the ability and necessity to divert water for a beneficial use, that there is unappropriated water in the proposed source for the preferred use of stockwatering and further that the granting of Application 40542 will not conflict with existing rights nor threaten to be detrimental to the public interest and welfare.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/SF/II

Dated this 22nd day of

February, 1985.