

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 33598 )  
AND 33599 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF WOODY CANYON )  
CREEK AND AN UNNAMED SPRING WITHIN )  
THE DESERT VALLEY GROUND WATER )  
BASIN IN PERSHING COUNTY, NEVADA. )

RULING

GENERAL

Application 33598 was filed on September 13, 1977, by Donald C. Danner to appropriate 2.7 c.f.s. of water from Woody Canyon Creek to irrigate 160 acres of land within portions of the N1/2 N1/2 Section 12, T.34N., R.33E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 12, T.34N., R.33E., M.D.B.&M.<sup>1</sup>

Application 33599 was filed on September 13, 1977, by Donald C. Danner to appropriate 2.7 c.f.s. of water from an Unnamed Spring to irrigate 160 acres of land within the N1/2 N1/2 Section 12, T.34N., R.33E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 12, T.34N., R.33E., M.D.B.&M.<sup>1</sup>

An informal protest dated April 12, 1978, was filed to the granting of Application 33598 by the United States Department of the Interior, Bureau of Land Management. The grounds of the protest are as follows:<sup>1</sup>

"We were not able to clear up legal procedures for payment of filing fees in time to protest the application for a water right by Donald C. Danner, application #33598. We do, however, submit this letter of concern to the State Water Engineer with the following reasons identified.

The Bureau of Land Management asserts its vested rights to the use of water in Woody Canyon Creek in order to protect water for the public's interest. This water source has been used for livestock grazing since 1859 and is currently used by cattle each year as follows: 566 cattle from April 1st through May 31st, 596 cattle from June 1st through July 31st, and 107 cattle from August 1st to October 3rd.

In addition to the licensed livestock use there are 151 wild horses year long within the area.

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<sup>1</sup> Public records in the office of the State Engineer.

The U.S. Government since acquiring the land and waters in 1848 has used the waters for deer and other wildlife. Adequate water must also be present to maintain aquatic habitat. Current reasonable numbers of deer using such water is 100 head year long.

BLM also protests this application on the grounds that the lands identified by Danner as point of use of such water is public land and the applicant has no authorization to make use of said land.

A timely protest was filed on April 5, 1978, to the granting of Application 33599 by the United States Government, Bureau of Land Management. The grounds of the protest are as follows:<sup>1</sup>

BLM's protest originates from our assertion of vested rights for the water in the unnamed spring. The area has been used for livestock grazing since 1859 to the current use by cattle in the amount of:

566 cattle April 1st to May 31st

596 cattle June 1st to July 31st

107 cattle August 1st to October 3rd.

In addition to the licensed livestock use there are 151 wild horses year long within the area.

The U.S. Government since acquiring the land and waters in 1848 has used the waters for deer and other wildlife, while also, maintaining the aquatic habitats. Current reasonable numbers of deer using the water are 100 head year long. Adequate water must be present to maintain the springs terrestrial habitat for both wildlife and aquatic needs.

BLM also protests this application on the grounds that the lands identified by Danner as point of use of such water is public land and the applicant has no authorization to make use of said land.

### FINDINGS

#### I.

Records and information available to the State Engineer indicate that Applications 33598 and 33599 were filed in support of a Carey Act application.<sup>1</sup>

#### II.

By letter dated October 7, 1986, the United States Department of Interior, Bureau of Land Management, notified the State Engineer that the following Carey Act application had been closed and the case file is dead.<sup>4</sup>

<u>BLM ENTRY NO.</u>	<u>NAME</u>	<u>LAND DESCRIPTION</u>
N-39954	Donald C. Danner	T.34N., R.33E., Sec. 12

III.

By letter dated June 5, 1986, the State of Nevada, Department of Conservation and Natural Resources, Division of State Lands, notified the State Engineer that Carey Act Application No. 1459, in the name of Donald C. Danner, will be closed.<sup>1</sup>

IV.

The applicant under Applications 33598 and 33599 does not own or control the land described under the place of use of the applications.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.<sup>2</sup>

II.

Applications 33598 and 33599 were filed in support of a Carey Act. The Carey Act application described under II of Findings has been closed on the records of the Bureau of Land Management, therefore, the applicant does not own or control the land described under the place of use of the applications and cannot demonstrate the ability to place the water to beneficial use.

III.

To grant applications to appropriate the public waters for irrigation on lands the applicant does not own or control or where the applicant cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

RULING

Applications 33598 and 33599 are herewith denied on the grounds that to grant the applications for irrigation purposes on lands that the applicant does not own or control and cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

Respectfully submitted,



Peter G. Morros  
State Engineer

PGM/SW/bl

Dated this 13th day of  
March, 1987.

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<sup>2</sup> NRS Chapters 533 and 534.