

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

IN THE MATTER OF APPLICATION 66063 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE MARY'S RIVER AREA )  
HYDROGRAPHIC BASIN (042), ELKO )  
COUNTY, NEVADA. )

RULING

# 4957

GENERAL

I.

Application 66063 was filed on February 9, 2000, by Julian C. Smith, Jr., and Joanna Smith to appropriate 0.05 cubic feet per second (cfs) of underground water for the stockwatering of 1000 head of cattle within the N $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 12, T.37N., R.58E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 12. Information contained within the application indicates that the proposed point of diversion is an existing well known as Hidden Well.<sup>1</sup>

II.

Application 66063 was timely protested by the United States Department of the Interior, Bureau of Land Management (BLM) on the following grounds.<sup>1</sup>

1. Hidden Well is located on public land in a multiple use management area, and wildlife is one of the uses.
2. The applicant has not been authorized by BLM to use or maintain the well.
3. All water rights acquired for stockwater on public land after August 21, 1995 must be in accordance with 43 CFR 4120.3-9.

<sup>1</sup> File Number 66063, official records in the office of the State Engineer.

4. BLM cost shared in the development of this project and must protect the investment of public funds by acquiring part or all of the water rights.

**FINDINGS OF FACT**

**I.**

Application 66063 requests a diversion rate of 0.05 cfs which is greater than the 0.0312 cfs of water that the State Engineer allocates for 1000 head of cattle. The State Engineer finds that should Application 66063 be approved, the diversion rate requested would be reduced to the amount sufficient to water 1000 head of cattle.

**II.**

Application 66063 was filed to appropriate underground water from an existing well which is located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 12, T.37N., R.58E., M.D.B.&M.<sup>1</sup> The State Engineer finds that a determination was made through an examination of the records of office of the State Engineer that, with the exception of Application 66063, there are no additional permitted, vested or reserved water rights appurtenant to this point of diversion.

**III.**

Under the provisions of NRS § 533.503, the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock upon the public land unless the applicant for the permit is legally entitled to place livestock upon the public lands for which the permit is sought.<sup>2</sup> By correspondence dated June 22, 2000, the applicants informed the State Engineer that they are the exclusive holder of the grazing privileges in the Winter Creek field of the Deeth Allotment, in which Hidden Well is located.<sup>1</sup> The State Engineer finds that the applicants have provided evidence that they are legally entitled to place

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<sup>2</sup> NRS § 533.503(1).

livestock upon the federal lands comprising the place of use under Application 66063.

IV.

It is one of the protestant's contentions that the approval of Application 66063 must follow the guidelines found under 43-CFR § 4120.3-9. This federal regulation mandates that any water right acquired on or after August 21, 1995, to use water on public land for the purpose of watering livestock must be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located and to the extent allowed by the laws of the State, any such water right shall be acquired in the name of the U.S. Government. The State Engineer finds that Nevada water law<sup>3</sup> requires the water right be in the name of the person legally entitled to place the livestock on the land (the applicant); therefore, the applicant has complied with state law.

V.

The protestant contends that Hidden Well is located on public land in a multiple use management area, and that wildlife is contained within these multiple uses. Application 66063 if approved, would provide a water source for cattle that graze within this portion of the Deeth Allotment. By making water available for cattle, there is a probability that an incidental use of this water by wildlife might also occur. To guarantee that this will take place on a continual basis under a permitted right, an application to appropriate water for wildlife purposes from the point of diversion requested under Application 66063 is necessary. The State Engineer finds that the approval of Application 66063 does not prohibit the State Engineer from considering subsequent requests for additional appropriations of water for wildlife purposes from the subject point of diversion.

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<sup>3</sup> NRS § 533.503.

**VI.**

Before the State Engineer can issue a permit to appropriate water for stockwatering purposes, the applicant must be legally entitled to place livestock upon the federal range allotment that contains the proposed point of diversion and place of use. Application 66063 was protested by the BLM partly on the grounds that it shared in the cost of the development of the well and must protect the investment of public funds by acquiring part or all of the water rights. While the BLM may have contributed to the construction of the well and works of diversion, it does not maintain a livestock operation within the proposed place of use and has no need to divert water from the subject well for stockwatering purposes. The State Engineer has previously denied applications filed by the BLM that requested new appropriations of water for stockwatering purposes; therefore, the State Engineer finds that the BLM would be unable to place any portion of Application 66063 that it may acquire to a beneficial use.

**VI.**

The State Engineer can issue permits subject to specific limitations and conditions. The BLM's protest is based in part on the grounds that the applicant has not obtained its approval to use or maintain Hidden Well. The State Engineer finds that a conditional approval of Application 66063 can be made that is dependent upon the applicant securing the BLM's approval to access and maintain the well.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.<sup>4</sup>

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>5</sup>

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<sup>4</sup> NRS chapters 533 and 534.

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

**III.**

Application 66063, if approved, would allow the current range permittee to appropriate underground water for stockwatering purposes upon the federal range. The State Engineer concludes that the applicant has met the criteria established under NRS § 533.503 and that the approval of Application 66063 would not threaten to prove detrimental to the public interest.

**IV.**

The approval of Application 66063 would allow the permitted federal range user to appropriate a maximum of 22.62 acre-feet per year of underground water from the Mary's River Area Groundwater Basin. The State Engineer concludes that this occasional use of underground water will not impair the BLM's ability to manage the public lands under multiple use guidelines.

**V.**

The proposed point of diversion requested under Application 66063 is an existing well whose waters are not currently appropriated under any valid permitted water rights. The State Engineer concludes that the approval of Application 66063 would not conflict with existing rights.

**VI.**

Application 66063 requests an appropriation of underground water for stockwatering purposes. The State Engineer concludes that the approval of a stockwatering permit from Hidden Well will

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<sup>5</sup> NRS § 533.370(3).

not prohibit the State Engineer from considering subsequent requests for appropriations of water for wildlife purposes from this same point of diversion.

RULING

The protest to Application 66063 is hereby overruled and Application 66063 is approved subject to existing rights, the payment of the statutory permit fee and the submittal to the office of the State Engineer of a cooperative agreement between the applicant and the BLM allowing the permittee to access and improve the well.

Respectfully submitted,

  
HUGH RICCI, P.E.  
State Engineer

HR/MDB/cl

Dated this 9th day of  
August, 2000.