

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

IN THE MATTER OF APPLICATION )  
56879 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF MURDOCK )  
SPRING WITHIN THE SWAN LAKE )  
VALLEY HYDROGRAPHIC BASIN )  
(07), WASHOE COUNTY, NEVADA. )

RULING

# 5150

GENERAL

I.

Application 56879 was filed on October 28, 1991, by Don and Rose Marie Coops to appropriate 0.10 cubic feet per second of water from Murdock Spring for stockwatering purposes within Section 16 and Section 21, T.45N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 16, T.45N., R.23E., M.D.B.&M.<sup>1</sup>

II.

Application 56879 was timely protested by the United States Fish and Wildlife Service (USFWS) on the following grounds:

1. The U.S. Fish and Wildlife Service holds a vested right to all of the waters of Murdock Spring for stock watering and wildlife watering purposes on the Sheldon National Wildlife Refuge.
2. Murdock Spring provides an essential source of water for the Sheldon cui chub (*Gila Bicolor Euryosoma*) a candidate species for listing under Endangered Species Act, 16 U.S.C. § 1531, *et seq.* Approval of the application would adversely affect the survival and recovery of this species and would be detrimental to the public interest under NRS 533.370.
3. Removal of the water applied for from the refuge lands would be incompatible with the authorized purposes of the Sheldon National Wildlife Refuge. Therefore the U.S. Fish and Wildlife Service will not grant a right-of-way permit under 50 C.F.R. Part 29 Subpart B to transport the water applied for from the spring source to the place of use identified in application No. 56879.

Therefore the protestant requests that the application be denied.<sup>1</sup>

<sup>1</sup> File No. 56879, official records in the Office of the State Engineer.

### III.

Application 56879 was timely protested by the State of Nevada Department of Wildlife on the following grounds:

- 1) The spring supports 50-75 antelope and numerous other wildlife. Diversion would leave nothing at the spring as the application is for 44.8 GPM, while USFWS data shows an average flow of 3-8 GPM over the last 5 years.
- 2) The spring provides an essential water source for the Sheldon Cui Chub (*Gila bicolor euryosoma*), a candidate species for listing under the Endangered Species Act.

Therefore the protestant requests that the application be denied.<sup>1</sup>

### FINDINGS OF FACT

#### I.

Nevada Revised Statutes § 533.365 (3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that a hearing is not necessary to rule on this application.

#### II.

Records submitted by the USFWS show that the USFWS acquired the land from which Murdock Spring emanates on July 10, 1937, from Thomas and Grace Dufurrena.<sup>1</sup> The State Engineer finds that Murdock Spring is within the Sheldon National Wildlife Refuge and is administered by the USFWS. The State Engineer finds that the applicant does not own or control the land at the proposed point of diversion.

#### III.

Bob Squires, acting agent for the applicants, submitted a copy of a Special Use Permit issued by the USFWS, Sheldon National Wildlife Refuge. The date stamp on the back of the document indicates that it was received by the State Engineer's Office on December 24, 1991. The Special Use Permit indicates that Don Coops is authorized to graze cattle from May 1 to October 15 annually on the Sheldon National Wildlife Refuge.<sup>1</sup>

*The Conservation Fund* purchased the Special Use Permit of Don Coops via assignment dated January 10, 1994. Subsequent to purchasing the Special Use Permit,

*The Conservation Fund* requested that the USFWS cancel all grazing privileges inherent in the permit.<sup>1</sup>

The State Engineer finds that the applicant is no longer authorized to access the lands for grazing purposes. The State Engineer finds to approve a permit for stockwatering when the applicant is not authorized to use the lands for grazing would threaten to prove detrimental to the public interest.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>2</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>3</sup>

- 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 the applicant is not the current range user and does not have access to the spring source; therefore, the approval of Application 56879 would threaten to prove detrimental to the public interest.

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<sup>2</sup> NRS chapter 533

<sup>3</sup> NRS § 533.370 (3)

**RULING**

Application 56879 is hereby denied on the grounds that to approve an application for stockwatering purposes where the applicant is not the authorized range user would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest claims by the USFWS and the State of Nevada Division of Wildlife.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 25th day of  
September, 2002.