

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

IN THE MATTER OF APPLICATION 56892)
FILED TO APPROPRIATE THE PUBLIC)
WATERS FROM AN UNDERGROUND)
SOURCE WITHIN THE DESERT VALLEY)
HYDROGRAPHIC BASIN (31), HUMBOLDT)
COUNTY, NEVADA.)

RULING
#5233

GENERAL

I.

Application 56892 was filed on October 30, 1991, by DeLong Ranches, Inc., to appropriate 1.0 cubic foot per second of water from an underground source for stockwatering purposes within the NW¼ SW¼ of Section 34, T.36N., R.34E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of said Section 34.¹

II.

Application 56892 was timely protested by the U.S.D.I. Bureau of Land Management on the following grounds:¹

Application 56892 is on an existing well located on public land. Humboldt County has filed application 56840 on this well. DeLong Ranches does not have a cooperative agreement for the project. A cooperative agreement is necessary for developing a project on public land.

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 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 consider the merits of the protest filed by the U.S.D.I., Bureau of Land Management.

¹ File No. 56892, 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 on the public lands unless the applicant for the permit is legally entitled to place livestock on the public lands for which the permit is sought. The BLM informed the State Engineer that DeLong Ranches, Inc., is the grazing permittee for the Blue Mountain Allotment, which contains the point of diversion and place of use described under Application 56892.¹ The State Engineer finds that the applicant is entitled by the proper federal agency to place livestock upon the public range serviced by the water source described under Application 56892.

III.

A determination was made, after an examination of the records of the Office of the State Engineer, that the proposed water source has a prior water right permit on it.² Permit 56840 was approved for 1.0 cfs, for industrial (dust control and road construction) purposes at the same well location as Application 56892. The State Engineer finds that the approval of Application 56892 would conflict with the existing water right under Permit 56840.

IV.

The applicant and its agent were requested by certified mail dated May 2, 2000, to submit additional information to the Office of the State Engineer if the applicant was still interested in pursuing Application 56892. The applicant and its agent were warned that failure to respond within 60 days might result in denial of the application. The certified mail receipts were returned to the Office of the State Engineer on May 5, 2000.¹ To date, no additional information has been submitted to the State Engineer's office. The State Engineer finds that the applicant and its agent were properly notified of the request for additional information regarding Application 56892 and failed to respond.

² Water Rights Database, Hydrographic Abstract, Basin 31, official records in the Office of the State Engineer.

CONCLUSIONS

I.

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

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.⁴

III.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where: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.

IV.

The applicant and its agent were properly notified of the requirement for additional information concerning this application and have failed to submit the information to the State Engineer's office. The State Engineer concludes that the failure to respond to the request for additional information demonstrates the applicant's lack of interest in pursuing Application 56892. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under an application for which no interest is expressed.

V.

The State Engineer concludes that approval of Application 56892 would conflict with a prior existing right under Permit 56840.

³ NRS chapters 533 and 534.

⁴ NRS § 533.375.

⁵ NRS § 533.370 (3).

RULING

Application 56892 is hereby denied on the grounds that its approval would conflict with existing rights and would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 5th day of
May, 2003.