

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

IN THE MATTER OF APPLICATIONS )  
59404, 59405, 59406, AND 59407 FILED )  
TO APPROPRIATE THE PUBLIC )  
WATERS FROM UNDERGROUND )  
SOURCES WITHIN THE CLOVER )  
VALLEY, GOSHUTE VALLEY, AND )  
ANTELOPE VALLEY HYDROGRAPHIC )  
BASINS (177), (187), AND (186B), ELKO )  
COUNTY, NEVADA. )

**RULING**  
**# 5241**

**GENERAL**

**I.**

Application 59404 was filed on November 29, 1993, by Von Loyd Sorensen and Marian P. Sorensen to appropriate 0.019 cubic feet per second (cfs) of water from West Highway Well for stockwatering and domestic purposes within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 15, T.31N., R.62E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 15.<sup>1</sup>

**II.**

Application 59405 was filed on November 29, 1993, by Von Loyd Sorensen and Marian P. Sorensen to appropriate 0.009 cfs of water from Salt Sage Well for stockwatering and domestic purposes within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T.32N., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 18.<sup>2</sup>

**III.**

Application 59406 was filed on November 29, 1993, by Von Loyd Sorensen and Marian P. Sorensen to appropriate 0.009 cfs of water from Sweet Sage Well for stockwatering and domestic purposes within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 36, T.30N., R.66E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 36.<sup>3</sup>

<sup>1</sup> File No. 59404, official records in the Office of the State Engineer.

<sup>2</sup> File No. 59405, official records in the Office of the State Engineer.

<sup>3</sup> File No. 59406, official records in the Office of the State Engineer.

IV.

Application 59407 was filed on November 29, 1993, by Von Loyd Sorensen and Marian P. Sorensen to appropriate 0.009 cfs of water from White Sage Well for stockwatering and domestic purposes within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, T.30N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 26.<sup>4</sup>

V.

Applications 59404, 59405, 59406, and 59407 were timely protested by the U.S.D.I., Bureau of Land Management (BLM) on the following grounds:<sup>1</sup>

1. The well is located on public land and is needed for multiple use management. The proposed well development occurs within the Spruce Allotment. The Spruce Allotment is scheduled to be evaluated in FY94 with a multiple use decision issued in FY95. The allotment evaluation and multiple use decision process will identify any water developments needed to meet the multiple use objectives on the allotment. Any water developments would be developed under cooperative agreements.  
The proposed well would be used by livestock from 11/1 through 5/31 [Applications 59406 and 59407 indicate 3/31] annually. During this same period of use, the water would be available to wildlife (antelope) and wild horses. [Applications 59406 and 59407 add ...The proposed well occurs within a Wild Horse Herd Management Area. BLM Instruction Memorandum No. NV-93-087 states that Range Improvement Applications for livestock water developments in Herd Management Areas (HMAs), or in the proximity of HMAs, be authorized through the cooperative agreement process and in compliance with Nevada State Water Law. In a cooperative agreement, the water rights would be filed jointly with BLM and the permittee or solely in BLM's name.]
2. The permittee has proposed to develop the well under a Section 4 Range Improvement Permit. Such permit has not been submitted. However, it is our policy to not authorize water developments under Section 4 Range Improvement Permits when BLM has other beneficial uses to manage for (wildlife and wild horses). Any proposed water developments in areas where BLM is managing for several uses would be constructed under a cooperative agreement and water rights would be filed jointly with BLM and the permittee or solely in BLM's name.

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<sup>4</sup> File No. 59407, official records in the Office of the State Engineer.

3. The waters currently available in this area consist of wells which were developed by the permittee, who also holds the water right. The projects were authorized under Section 4 Range Improvement Permits at the time. In the past there has been noncompliance of Special Project Stipulations under which the projects were authorized. No water has been left in the troughs for wildlife and wild horses when livestock were removed from the area.
4. BLM will withdraw the protest of this application when partial interest in this water right application is assigned to BLM.

### **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.

#### **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. By letter dated December 22, 1993, the BLM informed the State Engineer that Von Sorensen is the permittee and range user for the locations described under Applications 59404, 59405, 59406, and 59407. This information was confirmed by the BLM Elko field office, by telephone, on January 31, 2003.<sup>1</sup> 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 sources described under Applications 59404, 59405, 59406, and 59407.

#### **III.**

A determination was made, after an examination of the records of the Office of the State Engineer, that there are no additional water right permits, proofs or claims filed for the proposed water sources.<sup>5</sup> The State Engineer finds that the approval of

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<sup>5</sup> Water Rights Database, Hydrographic Abstract, official records in the Office of the State Engineer.

Applications 59404, 59405, 59406, and 59407 would not conflict with existing water rights.

#### IV.

Applications 59404, 59405, 59406, and 59407 were protested in part by the BLM on the grounds that the waters from these underground sources are required for multiple use management of the vacant public lands, which are adjacent to, adjoining, and overlying the water source. Since the BLM issued a permit for livestock grazing on these lands, multiple use management of these waters must include stockwatering purposes. The State Engineer finds that the approval of Applications 59404, 59405, 59406, and 59407 would not deter the multiple use management of the land since the application is for stockwatering purposes.

#### V.

The protest implies that the applicant must have a Section 4 Range Improvement Permit or cooperative agreement. Any water right permits issued under Applications 59404, 59405, 59406, and 59407 would not extend the permittee the right of ingress and egress on public, private, or corporate lands, and would not waive any permitting requirements by other State, Federal, and local agencies. The State Engineer finds that Federal-permitting and access requirements would not be superceded by the issuance of a water right permit.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.<sup>6</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>7</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

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<sup>6</sup> NRS chapters 533 and 534.

<sup>7</sup> NRS § 533.370 (3).

D. the proposed use or change threatens to prove detrimental to the public interest.

**III.**

The State Engineer concludes there is unappropriated water at the source and the proposed use will not conflict with existing rights.

**IV.**

The State Engineer concludes that stockwatering is a beneficial use and the applicant is the current range user of the federal grazing allotment; therefore, the approval of Applications 59404, 59405, 59406, and 59407 would not threaten to prove detrimental to the public interest.

**RULING**

The protests to Applications 59404, 59405, 59406, and 59407 are hereby overruled and said applications are hereby approved subject to:

1. Payment of the statutory permit fees; and
2. Existing water rights.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 9th day of  
May, 2003.