

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

IN THE MATTER OF APPLICATIONS)
68553, 68554, 68555, 68556, 68557,)
68558, 68559, 68560, 68561, 68562,)
68563, 68564 AND 68565 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
NUMEROUS UNDERGROUND AND SURFACE)
SOURCES WITHIN THE SWAN LAKE VALLEY)
(007), THE MASSACRE LAKE VALLEY)
(008) AND THE HIGH LAKE VALLEY)
(025), HYDROGRAPHIC BASINS, WASHOE)
COUNTY, NEVADA.)

RULING

#5298

GENERAL

I.

Applications 68553, 68554, 68555, 68556, 68557, 68558, 68559, 68560, 68561, 68562, 68563, 68564 and 68565 were filed on March 7, 2002, by Stuart L. Brown, DBA, Double Horseshoe Ranch, L.L.C., each requesting new appropriations of water for stock watering purposes. The common proposed place of use for all of these applications can be generally described as the Nut Mountain federal grazing allotment.¹ A more detailed description of this place of use and the specifics of each application is contained within Attachments "A" and "B", which are incorporated into this ruling.

II.

Applications 68553, 68554, 68555, 68557, 68559, 68560, 68561 and 68565 were timely protested by the United States Department of Interior, Bureau of Land Management (BLM) on the following grounds:¹

The point of diversion as listed in the public notice, is located on public land managed by the Surprise Field Office of the Bureau of Land Management. In the application for permit, the applicant listed the

¹ File Nos. 68553, 68554, 68555, 68557, 68559, 68560, 68561 and 68565, official records in the Office of the State Engineer.

water to be used for livestock. Currently, the applicant has leased his grazing permit to another operator and is not allowed to place livestock on public lands until the grazing lease is terminated or has expired. Furthermore, the cumulative affects of this application in conjunction with the other 13 applications that this applicant has filed in the same region may inhibit other multiple uses of the public lands and may prove to be detrimental to the public interest. Other uses, which are currently occurring within this region, include: Livestock Grazing, Wild Horses, Recreation and Wildlife.

III.

Applications 68556, 68558, 68562, 68563 and 68564 were timely protested by the BLM on the following grounds:²

Applications 68556, 68558, 68562, 68563, and 68564 were applied for by Brown, SL, DBA DBL. Horseshoe Ranch on March 7, 2002. The applications were submitted along with 9 other applications by Mr. Brown for the same region in Washoe County. The above 5 applications on spring sources are considered public water reserves (PWR) and are not available for appropriation unless there is excess water beyond the requirements of the PWR.

The original intent of the public water reserve was to prevent the monopolization of public land by gaining control of the limited water sources. In this case, Mr. Brown has filed on several water sources in the allotment, and if permitted will control the adjacent public lands. Where the sources occur on private land, the Bureau of Land Management has opted not to intervene. The remaining water sources on public land, therefore, become all the more important.

The point of diversion as described in the applications are located within the Nut Mountain Allotment in an area where most of the spring sources are on private land. These sources are located in the Nut Mountain Herd Management Area, and as such, incidental use by wild horses can be expected. Furthermore, the cumulative affects of this application in conjunction with the other 13 applications that this applicant has filed in the same region may inhibit other multiple uses of the public lands and may prove to be

² File Nos. 68556, 68558, 68562, 68563 and 68564, official records in the Office of the State Engineer.

detrimental to the public interest. Other uses, which are currently occurring within this region, include: Livestock Grazing, Wild Horses, Recreation and Wildlife.

The protestant requested Applications 68556, 68558, 68562, 68563 and 68564 be denied pending further analysis of the water resource capabilities of the area.

FINDINGS OF FACT

I.

Under the provisions of NRS § 533.503, the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless the applicant for the permit is legally entitled to place livestock on the lands for which the permit is sought. The State Engineer finds that before the subject applications can be considered for approval, it must be determined that the applicant meets the criteria established under NRS 533.503.

II.

The submittal of an application requesting a new appropriation of water for stock watering purposes to the Office of the State Engineer, initiates a procedure which determines the status of the land underlying the proposed point of diversion and if necessary, the applicant's ability to place livestock upon the public range. If the applicant seeks an appropriation of water from a source that is located upon land administered by the BLM, a letter requesting specific information relating to the associated grazing allotment is sent to the appropriate BLM office. If the information received from the BLM identifies the water right applicant as the recognized federal range permittee, further consideration can be given towards the approval of the water right application. Accordingly, by letter dated March 14, 2002, the BLM was requested by the Office of the State Engineer to provide information regarding the current range permittee, the name of the range allotment, kind and number of animals and the period of use

for the lands comprising the proposed place of use. A written response was received from the Surprise Valley (California) Field Office of the BLM which identified Stuart L. Brown, DBA Double Horseshoe Ranch, L.L.C., as the holder of the federal grazing permit issued for the Nut Mountain Allotment, within which the subject proposed points of diversion and places of use are located. Additional information provided by the BLM indicated that a second party had gained the water right applicant's permission to pasture cattle on the Nut Mountain allotment through a three year lease agreement from Stuart L. Brown, DBA, Double Horseshoe Ranch, L.L.C.^{1,2} The State Engineer finds that the applicant's temporary lease agreement does not disqualify him from meeting the criteria established under NRS 533.503.

III.

Those water right applications that request appropriations of water from spring sources are represented by Applications 68558, 68563 and 68564. These springs are on located upon public land, administered by the BLM. The land status maps distributed by the BLM indicate that these springs arise on lands that have never been reserved from the public domain.³ It was possible to locate each spring site and evaluate its geomorphology on recent aerial photographs, supplemented by topographic map coverage.⁴ The Single Springs drainage path appears not to be tributary to any other surface water source. The exact locations of Secret Spring

³ Vya, Nevada 30 x 60 Minute Series, 1:100 000 Surface Management Map, BLM, 1979.

⁴ File Nos. 68558, 68563 and 68564, official records in the Office of the State Engineer, See; copies of aerial images obtained from Terraserver online website, October 1, 2003, filed within the respective permit files.

and Hidden Spring are not distinctly visible on the aerial images, but the trace of their drainage is discernible. There is no evidence that can be derived from the aerial images to suggest that a sustained flow of water is conveyed from these two spring areas to any downstream water features. Based upon information, which has been derived from a series of recent aerial images supplemented by supporting topographic maps, the State Engineer finds that the spring sources identified under Applications 68558, 68563 and 68564 are not tributary to any established stream system.

IV.

A determination was made through an examination of the public records of the Office of the State Engineer that, with the exception of the applicant's water right filings, there are no valid existing water right permits, proofs or public water reserve claims currently filed to appropriate surface water from the three subject springs.⁵ The State Engineer finds that the approval of Applications 68558, 68563 and 68564 would not conflict with existing water rights.

V.

Applications 68555, 68556, 68559, 68560, 68561 and 68562, differ slightly from the previous group of applications in that they request appropriations of stock water from small reservoirs. A search of the records of the Office of the State Engineer found no other active applications, permits or claims of historic use appurtenant to these water sources. These reservoirs are also located within the Nut Mountain federal grazing allotment upon land, which is administered by the BLM. This limits the use of these reservoirs for stock watering purposes to the holder of the federal grazing allotment permit. A search of the records of the Office of the State Engineer specific to Hydrographic Basins 007,

⁵ Nevada Division of Water Resources Water Right Database, December 9, 2002, official records in the Office of the State Engineer.

008 and 025 indicates that the only active water right for the reservoir locations described under this subgroup are held under the applicant's name. The State Engineer finds that with the exception of the applicant, no other party has maintained active requests for appropriations of water from the subject reservoirs.

VI.

A similar water right analysis was performed for Applications 68554, 68557 and 68565, which request new appropriations of underground water from existing well sites, none of which have senior existing water rights, held by second parties.² A request for a new appropriation of underground water has been filed for the Davis Well. Application 68852 was submitted by Tim Lawson to support that portion of his cattle operation, which utilizes the Bitner Allotment. Information provided by the Surprise Valley field office, indicates that the Davis Well was designed to provide livestock water for both the Bitner and Nut Mountain Allotment. This arrangement allows either range permittee to utilize the Davis Well for stock watering purposes. The granting of a water right permit for the diversion rate and annual duty requested under Application 68557, would not preclude consideration of the junior water right filing represented by Application 68852. The State Engineer finds, that the approval of Applications 68554, 68557 and 68565 would not conflict with existing water rights that appropriate underground water from the subject hydrographic basins.

VII.

The two requests for additional underground water represented by Applications 68554, 68557 and 68565 are located within groundwater basins where new appropriations of underground water are still being considered for approval. The State Engineer finds that unappropriated underground water exists within the sources targeted for appropriation under Applications 68554, 68557 and 68565.

VIII.

Applications 68553, 68554, 68555, 68556, 68557, 68558, 68559, 68560, 68561, 68562, 68563 and 68564 were protested by the BLM on the grounds that the accumulative effect of their approval would jeopardize its ability to manage the public lands under multiple use guidelines.¹ The State Engineer finds that the granting of applications that request modest appropriations of water for an occasional stock watering use will not monopolize the region's water resources to a point which would impair future multiple uses of the land. Additionally, the State Engineer finds that if a need arises to secure a source of water to support a specific Multiple Use, it can be addressed through the State Engineer's application process.

CONCLUSIONS

I.

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

II.

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

- 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 subject applications, if approved, would allow the current range permittee to appropriate underground water for stockwatering purposes upon the public range. The State Engineer

⁶ NRS chapters 533 and 534.

⁷ NRS § 533.370(3).

concludes that the applicant has met the criteria established under NRS § 533.503 and the approval of the subject applications would not threaten to prove detrimental to the public interest.

IV.

The surface and underground sources requested for appropriation under the subject water right applications are free of senior competing water rights; therefore, the State Engineer concludes that their approval would not conflict with existing water rights.

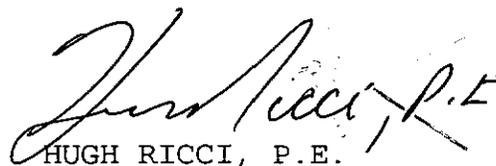
V.

The State Engineer concludes that water is available for appropriation from the sources described under the subject applications.

RULING

The BLM's protests to Applications 68553, 68554, 68555, 68556, 68557, 68558, 68559, 68560, 68561, 68562, 68563, 68564 and 68565 are hereby overruled and the aforementioned permits are approved subject to existing rights and payment of the respective statutory permit fees.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MB/jm

Dated this 10th day of
October, 2003.

ATTACHMENT "A"

<u>App. No.</u>	<u>Source</u>	<u>Point of Diversion Description</u> <u>All within M.D.B.&M.</u>
68553	Massacre Creek Corrals Well	SE ¹ / ₄ SE ¹ / ₄ Sec. 34, T.43N., R.21E.
68554	Salt Grass Well	SE ¹ / ₄ NE ¹ / ₄ Sec. 18, T.43N., R.22E.
68555	Coyote Res.	NW ¹ / ₄ SE ¹ / ₄ Sec. 31, T.43N., R.22E.
68556	Nut Spring/Rock Res.	NW ¹ / ₄ NE ¹ / ₄ Sec. 03, T.42N., R.22E.
68557	Davis Well	SE ¹ / ₄ NW ¹ / ₄ Sec. 13, T.43N., R.22E.
68558	Single Spring	SW ¹ / ₄ NW ¹ / ₄ Sec. 06, T.42N., R.23E.
68559	Cow Canyon Res.	SW ¹ / ₄ NW ¹ / ₄ Sec. 05, T.42N., R.23E.
68560	Bluff Pocket Res.	SE ¹ / ₄ NW ¹ / ₄ Sec. 17, T.42N., R.23E.
68561	Wild Horse Res.	SW ¹ / ₄ SW ¹ / ₄ Sec. 14, T.42N., R.22E.
68562	Wild Cow Spring/Forks Res.	SW ¹ / ₄ NE ¹ / ₄ Sec. 14, T.42N., R.22E.
68563	Secret Spring	SW ¹ / ₄ NE ¹ / ₄ Sec. 25, T.42N., R.22E.
68564	Hidden Spring	SW ¹ / ₄ NE ¹ / ₄ Sec. 25, T.42N., R.22E.
68565	Yellow Hills Well	NW ¹ / ₄ NW ¹ / ₄ Sec. 10, T.41N., R.23E.

ATTACHMENT "B"

<u>App. No.</u>	<u>Diversion rate (cfs)</u>	<u>Number of Cattle</u>
68553	0.025	815
68554	0.025	815
68555	0.025	97
68556	0.025	40
68557	0.025	815
68558	0.0002	8
68559	0.001	46
68560	0.003	10
68561	0.002	50
68562	0.005	5
68563	0.001	20
68564	0.001	20
68565	0.04	1,215