

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

IN THE MATTER OF APPLICATIONS)
43022, 43030, 61949, 63550, AND)
63551, FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN)
THE BIG SMOKY VALLEY -)
TONOPAH FLAT (137A), BIG SMOKY)
VALLEY - NORTHERN PART (137B),)
AND RALSTON VALLEY (141))
HYDROGRAPHIC BASINS, NYE)
COUNTY, NEVADA.)

RULING

#5444

GENERAL

I.

Application 43022 was filed on December 31, 1980, by the Bureau of Land Management, Battle Mountain District to appropriate 0.1 cubic feet per second (cfs) of water from an underground source for stockwatering purposes within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T.10N., R.43E., 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 22.¹

II.

Application 43030 was filed on December 31, 1980, by the Bureau of Land Management, Battle Mountain District to appropriate 0.1 cfs of water from an underground source for stockwatering purposes within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T.4N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 16.²

III.

Application 61949 was filed on March 11, 1996, by the U.S.D.I. Bureau of Land Management to appropriate 0.02 cfs of water from Jakes Well, an underground source, for stockwatering purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T.11N., R.43E., M.D.B.&M.

¹ File No. 43022, official records in the Office of the State Engineer.

² File No. 43030, official records in the Office of the State Engineer.

The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 24.³

IV.

Application 63550 was filed on November 6, 1997, by Stephen C. Wilmans, III and the U.S.D.I. Bureau of Land Management to appropriate 0.01 cfs of water from Power Line Well, an underground source, for stockwater purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, T.9N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34.⁴

V.

Application 63551 was filed on November 6, 1997, by Russell W. Berg, Sr., Stephen C. Wilmans, III and the U.S.D.I. Bureau of Land Management to appropriate 0.01 cfs of water from Moore's Well, an underground source, for stockwater purposes within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.12N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15.⁵

VI.

Application 43030 was timely protested on grounds not considered in this ruling.²

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, based on the protest issues, that a hearing is not necessary.

II.

In 2003, the Nevada Legislature amended NRS § 533.503 to provide, in part, that:

The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless:

(a) The applicant for the permit is legally entitled to place the livestock on the lands for which the permit is sought and:

- (1) Owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought; or

³ File No. 61949, official records in the Office of the State Engineer.

⁴ File No. 63550, official records in the Office of the State Engineer.

⁵ File No. 63551, official records in the Office of the State Engineer.

- (2) Has received from a person described in subparagraph (1), authorization to have physical custody of the livestock on or to be placed on the lands for which the permit is sought, and authorization to care for, control and maintain such livestock;
- (b) The forage serving the beneficial use of the water to be appropriated is not encumbered by an adjudicated grazing preference recognized pursuant to law for the benefit of a person other than the applicant for the permit; and
- (c) The lack of encumbrance required by paragraph (b) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit, that is issued by the appropriate governmental entity to the applicant for the permit.

The law clearly states that the State Engineer shall not issue a permit to appropriate water for livestock unless the applicant owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought.

The State Engineer finds the Bureau of Land Management (BLM) does not own, lease or otherwise possess a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought and is therefore not qualified to obtain a stockwater permit under Nevada Water Law.

III.

Applications 63550 and 63551 were filed jointly between private individuals and the BLM. The State Engineer finds that when an application is filed jointly, all parties on the joint application must meet the provisions of NRS § 533.503. Since the State Engineer has already found the BLM is not qualified to obtain a stockwater permit, the State Engineer finds that joint Applications 63550 and 63551 cannot be approved.

CONCLUSIONS

I.

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

⁶ NRS chapters 533 and 534.

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 threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that Nevada law prohibits the State Engineer from issuing a permit to appropriate water for livestock, unless the applicant owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought, and since the BLM does not meet this requirement, the subject applications must be denied in accordance with NRS § 533.503.

RULING

Applications 43022, 43030, 61949, 63550 and 63551 are hereby denied under the provisions of NRS § 533.503. No ruling is made on the merits of the protest to Application 43030.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 27th day of

October, 2004.

⁷ NRS § 533.370 (4).