

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

IN THE MATTER OF APPLICATION 66559 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS FROM BOSTON SPRINGS #1 )  
WITHIN THE SALMON FALLS CREEK )  
AREA HYDROGRAPHIC BASIN (40), )  
ELKO COUNTY, NEVADA. )

**RULING**  
**# 5591**

**GENERAL**

**I.**

Application 66559 was filed on July 17, 2000, by the United States of America, Department of the Interior, Bureau of Land Management (BLM) to appropriate 0.00031 cubic feet per second of water from Boston Springs #1 for wildlife purposes within Section 4, the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 8, and Section 9 all in T.45N., R.65E. and Section 33, T.46N., R.65E., 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 8.<sup>1</sup>

**II.**

Application 66559 was timely protested by the Board of County Commissioners, County of Elko on the following grounds:<sup>1</sup>

The Board of County Commissioners protest the abovenoted [sic] application on the basis of the State of Nevada is owner of the water and the wildlife. Therefore, there is not a valid need for a Federal Government entity to hold a water right for wildlife use purposes.

**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 the issues raised by the protestant have been adequately addressed in the past and a hearing is not necessary to consider the merits of the protest.

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<sup>1</sup> File No. 66559, official records in the Office of the State Engineer.

## II.

The protestant has implied that it is not necessary or appropriate for the BLM to hold water rights in the state of Nevada. Nevada Revised Statute § 533.325 provides that only a "person" can file an application to appropriate water. In general usage, a "person" is defined to be a human being, firm, labor organization, partnership, association, corporation, legal representative, trustee, etc.<sup>2</sup> Nevada Revised Statute § 533.010 defines person as used in chapter 533 to include the United States and the State of Nevada. Nevada Revised Statute § 534.014 defines person to include any municipal corporation, power district, political subdivision of this or any state, or an agency of the United States Government. The State Engineer finds that the BLM is a person as defined in Nevada water law and is therefore entitled to file an application to appropriate the public waters of Nevada within the confines of Nevada water law.

## III.

The protestant argues that the BLM has no legal mandate or necessity to obtain or use water to manage or serve wildlife. These issues have been previously addressed, in part, under State Engineer's Ruling Nos. 4671 and 4943 and Nevada case law.<sup>3</sup>

In State Engineer's Ruling No. 4671, the State Engineer found that while the Nevada Division of Wildlife<sup>4</sup> has statutory duties related to wildlife, this does not preclude the United States from requesting an appropriation of water to serve that beneficial purpose. In State Engineer's Ruling No. 4943, the State Engineer found that there was no basis or foundation that would dictate a finding that the BLM may not appropriate water for the purposes of watering wild horses and wildlife. For Application 66559, the BLM has requested water for wildlife purposes, which includes the watering of wildlife and the establishment and maintenance of wetlands, fisheries, and other wildlife habitats.<sup>5</sup>

The State Engineer finds that Nevada water law recognizes wildlife watering as a beneficial use of water. The State Engineer finds that the BLM may file an application to appropriate the public waters of the State of Nevada for wildlife purposes in compliance with state water law.

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<sup>2</sup> Black's Law Dictionary, 1028(5<sup>th</sup> ed. 1979).

<sup>3</sup> State, Board of Agriculture v. Morros, 104 Nev. 709 (1988).

<sup>4</sup> Note, the Nevada Division of Wildlife is now the Nevada Department of Wildlife.

<sup>5</sup> NRS § 533.023.

#### IV.

The State Engineer's office has long held that federal agencies must comply with state water law.<sup>6</sup> The State Engineer finds that the BLM, by filing an application to appropriate the public waters of the State of Nevada, has accepted the authority of the State Engineer and is in compliance with Nevada water law.

#### V.

While the Nevada Department of Wildlife has statutory duties related to wildlife, the BLM also has statutory duties related to wild horses and wildlife on public lands managed by the BLM. These duties are outlined in the Congressional declaration of policy within the Federal Land Policy and Management Act of 1976 (Public Law 94-579) and are contained within the Wild Horse and Burro Act of 1971 (Public Law 92-195). The BLM administers public lands within a framework of numerous laws. The most comprehensive of these is the Federal Land Policy Act of 1976 (FLPMA). All BLM policies, procedures and management actions must be consistent with FLPMA and the other laws that govern the use of the public lands. Part of FLPMA states, "[T]he Congress declares that it is the policy of the United States that – (8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;"<sup>7</sup>

Nevada water law defines wildlife purposes to include the watering of wildlife and the establishment and maintenance of wetlands, fisheries and other wildlife habitats.<sup>8</sup> The State Engineer finds that the BLM has the authority to appropriate water, in compliance with Nevada water law, for wildlife purposes.

#### VI.

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

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<sup>6</sup> State Engineer's Ruling No. 3242, p. 21, dated October 4, 1985, official records in the Office of the State Engineer.

<sup>7</sup> Public Law 94-579, Section 102, Paragraph 8.

<sup>8</sup> NRS § 533.023.

for the proposed water source.<sup>9</sup> The State Engineer finds that the approval of Application 66559 would not conflict with existing water rights.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>10</sup>

#### II.

The State Engineer concludes there is no basis or foundation under applicable law to support the position of the protestant.

#### III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:<sup>11</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.

#### IV.

Application 66559 requests approximately 0.179 acre-feet annually of surface water from Boston Springs #1. The State Engineer concludes that there is unappropriated water at the source sufficient to satisfy the minimal requirements of the requested appropriation and said appropriation will not conflict, interfere with, nor impair the value of existing rights.

#### V.

Application 66559 requests an appropriation of surface water from Boston Springs #1 for wildlife purposes by the BLM. Nevada water law recognizes this purpose as a beneficial use and recognizes the BLM as an entity entitled to file an application to appropriate water for this beneficial use within the confines of state law. The State

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<sup>9</sup> Water Rights Database, Hydrographic Abstract, official records in the Office of the State Engineer.

<sup>10</sup> NRS chapter 533.

<sup>11</sup> NRS § 533.370(4).

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Engineer concludes that approval of the subject applications would not threaten to prove detrimental to the public interest.

**RULING**

The protest to Application 66559 is hereby overruled and Application 66559 is hereby approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/MJW/jm

Dated this 14<sup>th</sup> day of

March, 2006.