

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

IN THE MATTER OF APPLICATION 58113)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE STONE CABIN)
VALLEY HYDROGRAPHIC BASIN (149),)
NYE COUNTY, NEVADA.)

RULING

#5639

GENERAL

I.

Application 58113 was filed on September 23, 1992, by Tom Colvin, Jr. to appropriate 0.05 cubic feet per second of water from Butte Well, an underground source, for stockwatering purposes (1,620 cattle) within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14, T.5N., R.48E., 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 Section 14, T.5N., R.48E. M.D.B.&M.¹

II.

Application 58113 was timely protested by Roy Clifford (Stone Cabin Partnership) on the grounds that "Stone Cabin Partnership has common range right usage in this area dating back to 1872 and as much as this area and close proximity contains a delicate white sage crop for winter grazing, we feel that watering facilities would draw cattle and horses (wild) and would endanger said feed."¹

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 Stone Cabin Partnership.

¹ File No. 58113, official records in the Office of the State Engineer.

II.

Application 58113 was filed to appropriate underground water on lands administrated by the Bureau of Land Management (BLM). The State Engineer finds that a determination was made through an examination of the records in the Office of the State Engineer that there are no other permitted, vested or reserved water rights within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, T.5N., R.48E., M.D.B.&M.

III.

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

1. 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
 - (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.²

On October 1, 1992, the State Engineer's office sent a letter to the BLM requesting information regarding the Applicant's status as a grazing permittee within the place of use described under Application 58113. The BLM responded by letter dated October 28, 1992, and indicated that the current authorized range user/permittees for the Stone Cabin Allotment were Tom Colvin, Jr. (20 to 1,886 cattle) and the Stone Cabin Partnership (200 cattle). On September 26, 2005, at the request of this office, Tom Colvin, Jr. (a.k.a.: Colvin & Sons, LLC) submitted a copy of his current grazing permit (20-2,067 cattle) for the Stone Cabin Allotment, which will expire on February 12, 2011.

² NRS § 533.503.

The State Engineer finds that the applicant is entitled by the proper federal agency to place livestock upon the public range described under Application 58113.

IV.

Stone Cabin Partnership's protest of Application 58113 was based on the anticipated depletion of winter forage by the increased presence of cattle and wildlife. This is a range management issue and does not involve any water right issues. This office defers to the appropriate authority on range management issues. The State Engineer finds that the applicant has a valid grazing permit; therefore, can place the water to beneficial use.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- 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 State Engineer concludes that Application 58113 does not conflict with any existing water rights; therefore, the approval of Application 58113 would not threaten to prove detrimental to the public interest.

IV.

The State Engineer concludes that the applicant is a current range user of the Stone Cabin Allotment; therefore, the approval of Application 58113 would not threaten to prove detrimental to the public interest.

³ NRS chapters 533 and 534.

⁴ NRS § 533.370 (5).

V.

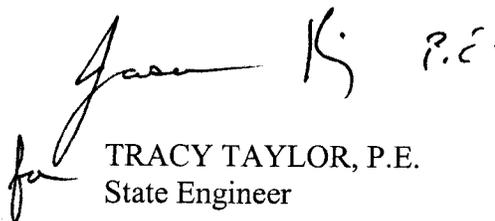
The State Engineer concludes that the protest by Stone Cabin Partnership raises issues that are not within the State Engineer's purview when reviewing a water right application.

RULING

The protest to Application 58113 is hereby overruled and said application is approved subject to:

- A. Existing rights; and
- B. Payment of the statutory permit fees.

Respectfully submitted,


TRACY TAYLOR, P.E.
State Engineer

TT/WHR/jm

Dated this 9th day of
August, 2006.