

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

IN THE MATTER OF APPLICATION 44852)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE WINNEMUCCA)
SEGEMENT HYDROGRAPHIC BASIN)
(70), HUMBOLDT COUNTY, NEVADA.)

RULING

5715

GENERAL

I.

Application 44852 was filed on October 29, 1981, by the Bureau of Land Management, Winnemucca District (BLM) to appropriate 0.025 cubic feet per second of water from an underground source for stock watering, wild horses and domestic purposes. The proposed place of use is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T.36N., R.36E., M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 30.¹

II.

Application 44852 was timely protested by T Quarter Circle Ranches, Inc. and Stanley Daniels on grounds not addressed in this ruling.¹

FINDINGS OF FACT

I.

The Applicant was requested by certified mail dated September 7, 2006, to indicate whether it was still interested in pursuing the application. The Applicant was warned that failure to respond within 60 days from the date of the letter, the application would be considered for denial. Properly endorsed certified mail receipts were received from the Applicant and their agent on September 12, 2006. The Applicant has failed to submit the information requested.¹ The State Engineer finds that the Applicant was properly notified of the request for additional information regarding interest in pursuing Application 44852 and failed to respond; therefore, the application will be denied.

¹ File No. 44852, official records in the Office of the State Engineer.

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 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.

The State Engineer finds the 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 stock-water permit under Nevada Water Law.

III.

Application 44852 was filed for stock watering, wild horses and domestic purposes. The application indicated that 300 cattle and 200 wild horses would be using the water. A water right application may only be filed for one purpose;² however, it is not uncommon for an applicant to note wildlife use on a stock-water application. Absent of any physical restrictions, wildlife will water at various water sources within their range independent of ownership or the stated beneficial use of a water right. If water is available, the wildlife may or may not choose to water at a particular source and the use may be consistent or sporadic depending on numerous environmental factors. The State Engineer finds that the application before him requests an appropriation of underground

² NRS § 533.330.

water for stock-watering purposes, as the one purpose allowed under NRS § 533.330, as stated on the application.

CONCLUSIONS

I.

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

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.⁴

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water 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.

IV.

The Applicant was properly notified of the requirement for additional information and failed to submit the information to the State Engineer's office. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

V.

The State Engineer concludes Application 44852 was filed for stock-watering purposes and the Applicant does not meet the requirements of NRS § 533.503; therefore, the application is subject to denial.

³ NRS chapters 533 and 534.

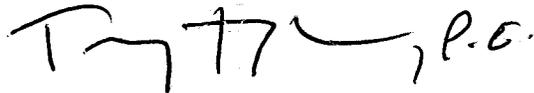
⁴ NRS § 533.375.

⁴ NRS § 533.370(5).

RULING

Application 44852 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/SJT/jm

Dated this 9th day of
February 2007