

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

IN THE MATTER OF APPLICATION 26888 )  
FILED TO STORE PUBLIC WATERS OF A )  
SURFACE SOURCE WITHIN THE )  
RAILROAD VALLEY HYDROGRAPHIC )  
BASIN (173B), NYE COUNTY, NEVADA. )

**RULING**

**# 5728**

**GENERAL**

**I.**

Application 26888 was filed on August 10, 1972, by Mae K. Bradshaw, later assigned to Barry Karl and Norma J. Bradshaw, for storage of 826.67 acre-feet of water, appropriated for irrigation purposes under Permit 21186, Certificate 8300, from Duckwater Creek. The proposed storage reservoir is described as being located within the W $\frac{1}{2}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 23 and the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14, all in T.11N., R.56E., M.D.B.&M.<sup>1</sup>

**II.**

Application 26888 was timely protested by Halstead-Forsgren Ranches, Inc., on the following grounds:<sup>1</sup>

That it would impair and conflict with the value of existing rights; that it would be against public policy to grant said application, and contrary to statute; that the granting of said application would interfere with the customary use of Protestant's grazing of said areas and Protestant's existing water rights.

**III.**

Application 26888 was timely protested by Copper Sheep Company on the following grounds:<sup>1</sup>

That it would impair and conflict with the value of existing rights; that it would be against public policy to grant said application, and contrary to statute; that the granting of said application would interfere with the customary use of Protestant's grazing of said areas and Protestant's existing water rights.

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<sup>1</sup> File No. 26888, official records in the Office of the State Engineer.

## **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 in the case of protested Application 26888 there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

### **II.**

The Protestants of Application 26888 were contacted by certified letter on January 27, 2006, to inquire if they wished to continue or withdraw their protests. The Protestants were warned that a failure to respond within 30 days would be deemed as a lack of interest in pursuing the protest and the protest would thereby be denied. The certified letter to the Copper Sheep Company was returned to the Office of the State Engineer by the U.S. Postal Service stamped, "Return to Sender." To date, the Copper Sheep Company has failed to respond to the certified letter; however, a response was filed by Blue Diamond Oil Corp. that indicated they have purchased the property and rights previously held by the Copper Sheep Company and the Blue Diamond Oil Corp. does not wish to pursue any protest against Application 26888. Protestant Halstead-Forsgren Ranches, Inc., d.b.a. Duckwater Cattle Company, responded by facsimile letter dated February 22, 2006, and indicated that they wish to pursue their protest. The State Engineer finds that the Copper Sheep Company protest must be dismissed for lack of interest and that the Halstead-Forsgren Ranches, Inc., protest remains in force.

### **III.**

The protests indicate that Application 26888 would interfere, impair, and conflict with existing rights. An examination of the location of decreed and permitted water rights on Duckwater Creek reveals that the points of diversion for Application 26888 and Permit 21186, Certificate 8300 are located downstream of all other existing rights on Duckwater Creek. In addition, the Applicant is not requesting any additional water from Duckwater Creek, rather Application 26888 is seeking to store a portion of the water

previously appropriated under Permit 21186, Certificate 8300.<sup>1</sup> The State Engineer finds that Application 26888 would not interfere, impair, or conflict with existing upstream diversions or water rights.

#### IV.

The protests indicate that it would be against public policy to grant said application, and contrary to statute. The Office of the State Engineer requested information from the Bureau of Land Management (BLM) since the reservoir is to be constructed on public land managed by BLM. In response to an inquiry, the Office of the State Engineer received a letter, dated April 7, 2006, from the BLM indicating that Mae Bradshaw has possession of a valid right-of-way permit on public land for a reservoir and ditches located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 11, NW $\frac{1}{4}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$  NE $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14, W $\frac{1}{2}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 23, W $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 24, and the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 25 all in T.11N., R.56E., M.D.B.&M.<sup>1</sup> The State Engineer finds that the proposed reservoir on public land under Application 26888 is authorized by the appropriate governmental agency.

#### V.

The protests indicate that Application 26888 would interfere with the customary use of grazing areas. Original BLM range use documents, dated March 28, 2006, submitted by Norma J. Bradshaw to the Office of the State Engineer, indicate that the proposed reservoir is located within the Ikes Spring/Ike Bench Use Area of the Duckwater Grazing Allotment. The Duckwater Cattle Company's, a.k.a. Halstead-Forsgren Ranches, Inc., range use area is north of the Ikes Spring/Ike Bench Use Area, in the Pancake East Bench Use Area of the Duckwater Allotment. In response to a telephone query by the Office of the State Engineer, the BLM, Ely Office e-mailed a response on June 14, 2006, that stated only Bradshaw Ranches and Blue Diamond Oil Corp. have grazing rights in the Ikes Spring/Ike Bench Use Area of the Duckwater Allotment.<sup>1</sup> The Blue Diamond Oil Corp. has indicated that they are the successors to the Copper Sheep Company and are on record as supporting Application 26888.<sup>2</sup>

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<sup>1</sup> See, File No. 26888, Blue Diamond Oil Corp. correspondence, February 7, 2006, official record in the Office of the State Engineer.

## VI.

During the course of discussions with Norma J. Bradshaw, she was informed that reservoir dam construction regulations have changed significantly since Application 26888 was filed in August 1972. The reservoir would require a Dam Safety Permit and would have to comply with current engineering and construction practices. Ms. Bradshaw indicated she understood and would not attempt construction herself. On April 20, 2006, HDR Engineering, Inc., submitted a letter, dated April 18, 2006, indicating that their offices had entered into preliminary discussions to design a dam for water storage under Application 26888.<sup>1</sup> The State Engineer finds that the Applicant has displayed the intent to comply with public safety guidelines and regulations.

### CONCLUSIONS

#### I.

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

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</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.

#### III.

The existing rights on Duckwater Creek are upstream of the point of diversion of Application 26888. In addition, Application 26888 will not increase any diversion of water from Duckwater Creek, but is only required for the storage of existing water rights in a dam/reservoir. The State Engineer concludes that Application 26888 would not interfere, impair, or conflict with existing upstream diversions or water rights; therefore, the approval of Application 26888 would not conflict with existing rights.

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<sup>3</sup> NRS chapter 533.

<sup>4</sup> NRS § 533.370 (5).

IV.

The Applicant has possession of a valid right-of-way permit for a reservoir and ditches and the BLM indicates that no grazing rights are impaired. The State Engineer concludes that the proposed reservoir under Application 26888 is authorized by the appropriate governmental agency; therefore, the approval of Application 26888 would not threaten to prove detrimental to the public interest.

V.

The State Engineer concludes that the protest claims of the Halstead-Forsgren Ranches, Inc., d.b.a. Duckwater Cattle Company, are without merit.

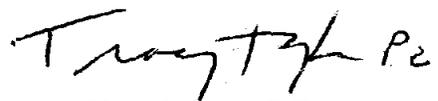
VI.

The State Engineer concludes that the Copper Sheep Company is no longer interested in maintaining their protest; therefore, the protest claim is dismissed.

**RULING**

The protests to Application 26888 are hereby overruled and Application 26888 is approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,

  
TRACY TAYLOR, P.E.  
State Engineer

TT/WHR/jm

Dated this 27th day of  
April, 2007