

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

IN THE MATTER OF APPLICATION )  
38639 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF A SURFACE )  
SOURCE WITHIN THE KOBEH VALLEY )  
HYDROGRAPHIC BASIN (139), EUREKA )  
COUNTY, NEVADA. )

**RULING**

**#5754**

**GENERAL**

**I.**

Application 38639 was filed on July 23, 1979, by Frank Paxton and Family, later assigned to Kenneth R. Buckingham, to appropriate 0.10 cubic feet per second of water from Tonkin Summit Spring. The proposed point of diversion and place of use is described as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 3, T.23N., R.49E., M.D.B.&M. <sup>1</sup>

**II.**

Application 38639 was protested by the U.S. Government, Bureau of Land Management (BLM), Battle Mountain District on the following grounds:<sup>1</sup>

Tonkin Summit Spring is on public land administered by the Bureau of Land Management. The number and kind of animals currently using the water are 111 animal units per month (includes cattle and wild horses), and 126 deer year long. The season of use is year long.

**FINDINGS OF FACT**

**I.**

Nevada Revised Statute (NRS) § 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 38639, there is sufficient information contained within the records of the Office of the

---

<sup>1</sup> File No. 38639, official records in the Office of the State Engineer.

State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

## II.

Before any diversion of water may be made, the appropriator must make application to and obtain from the State Engineer, a permit to appropriate the water.<sup>2</sup> An examination of the records of the Office of the State Engineer, show that there are no additional water right permits, proofs or claims filed at the proposed point of diversion.<sup>3</sup> The State Engineer finds that there are no other existing water rights at the proposed point of diversion.

## 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.

By letter dated May 30, 2006, the BLM - Battle Mountain District indicated that Application 38639 is located on the JD Range Allotment. The letter also confirmed the Applicant is the authorized range user/permittee for 280 cattle in Tonkin Summit

---

<sup>2</sup> NRS § 534.050(3).

<sup>3</sup> Nevada Division of Water Resources Water Rights Database, Special Hydrographic Abstract.

Pasture.<sup>1</sup> The State Engineer finds that the Applicant is entitled by the proper federal agency to place livestock upon the public range described under Application 38639.

#### IV.

In July 2006, the BLM Office in Battle Mountain was contacted to inquire if they would consider withdrawing their protest, since Kenneth R. Buckingham is the current range user. The Battle Mountain Field Office replied, by letter dated July 31, 2006, that it wished to maintain the original protest because it is still valid. Water right permits issued by the State Engineer do not extend the permittee the right of ingress and egress on public, private, or corporate lands, and do not waive any permitting requirements by other State, Federal, and local agencies. If the Applicant needs to do any development on the public lands, the issuance of a water right permit will not absolve the Applicant of any additional permitting requirements from other regulatory agencies. The State Engineer finds that Federal-permitting requirements would not be annulled by the issuance of a water right permit to the Applicant.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>4</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>5</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use 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 stockwatering is a beneficial use and the Applicant is the current range user of the federal grazing allotment; therefore, the

---

<sup>4</sup> NRS chapters 533.

<sup>5</sup> NRS § 533.370(5).

approval of Application 38639 would not threaten to prove detrimental to the public interest.

IV.

The State Engineer concludes that the proposed use will not conflict with existing rights.

V.

The State Engineer concludes that Federal permitting requirements would not be annulled by the issuance of a water right permit to the Applicant; therefore, the protest is without merit.

**RULING**

The protest to Application 38639 is hereby overruled and said application 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

July, 2007.