

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

IN THE MATTER OF APPLICATIONS 44751, )  
44756, 44757 AND 44771 FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF )  
AN UNDERGROUND SOURCE WITHIN THE )  
ANTELOPE VALLEY HYDROGRAPHIC )  
BASIN (57), MIDDLE REESE RIVER VALLEY )  
HYDROGRAPHIC BASIN (58), CRESCENT )  
VALLEY HYDROGRAPHIC BASIN (54) AND )  
RAILROAD VALLEY HYDROGRAPHIC )  
BASIN (173B), LANDER COUNTY AND NYE )  
COUNTY, NEVADA. )

**RULING**

**#5778**

**GENERAL**

**I.**

Application 44751 was filed on October 29, 1981, by the United States Department of Interior, Bureau of Land Management (BLM) to appropriate 0.01 cubic feet per second (cfs) of water from an underground source for livestock/wild horse purposes. The proposed place of use is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 10, T.24N., R.41E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 10.<sup>1</sup>

**II.**

Application 44756 was filed on October 29, 1981, by the BLM to appropriate 0.01 cfs of water from an underground source for livestock/wild horse purposes. The proposed place of use is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 6, T.25N., R.42E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 6.<sup>2</sup>

**III.**

Application 44757 was filed on October 29, 1981, by the BLM to appropriate 0.01 cfs of water from an underground source for livestock/wild horse purposes. The proposed place of use is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 8,

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<sup>1</sup> File No. 44751, official records in the Office of the State Engineer.

<sup>2</sup> File No. 44756, official records in the Office of the State Engineer.

T.27N., R.47E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of said Section 8.<sup>3</sup>

**IV.**

Application 44771 was filed on October 29, 1981, by the BLM to appropriate 0.01 cfs of water from an underground source for livestock/wildlife purposes. The proposed place of use is described as being located within the W½ SE¼ of Section 18, T.6N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of said Section 18.<sup>4</sup>

**V.**

Application 44751 was timely protested by Altamira Farms and Ellison Ranching Company on grounds not considered in this ruling. Application 44756 was timely protested by Ellison Ranching Company on grounds not considered in this ruling. Application 44757 was timely protested by Garley Amos, C. Ranches, Inc., Roaring Springs Association, Phillipini Ranching Company, and Robert Chiara on grounds not considered in the ruling. Application 44771 was timely protested by Sharp Ranches on grounds not considered in this ruling.

**FINDINGS OF FACT**

**I.**

The Applicant was notified by certified mail dated November 4, 2005, to submit additional information regarding interest in pursuing Applications 44751, 44756, 44757 and 44771 to the State Engineer's office. Specifically, Applications 44751, 44756 and 44757 were filed for livestock/wild horses and Application 44771 was filed for livestock/wildlife. In light of existing Nevada water law (NRS § 533.503) regarding the issuance of stockwater applications, the Applicant was given the opportunity to amend the applications through the deletion of livestock. This would allow for Applications 44751, 44756 and 44757 to be considered for wild horses only and Application 44771 to be considered for wildlife only. The limitation of this course of action was also explained. Several other options were suggested including the option of doing nothing. The Applicant was warned that failure to respond or to take some other action within 30 days of the date of the letter would result in denial of the applications.<sup>1, 2, 3, 4</sup>

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<sup>3</sup> File No. 44757, official records in the Office of the State Engineer.

<sup>4</sup> File No. 44771, official records in the Office of the State Engineer.

The U.S. Postal Service returned properly endorsed certified mail receipts to the Office of the State Engineer on November 8, and November 14, 2005.<sup>1</sup> To date, the Applicant has failed to respond in writing and has failed to take any action that would allow the application process to move forward.

The State Engineer finds that the Applicant was properly notified of the request for additional information regarding Applications 44751, 44756, 44757 and 44771 and has failed to respond.

## II.

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.

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 stockwater permit under Nevada water law.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

### 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.<sup>6</sup>

### III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:<sup>7</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.

The Applicant was properly notified of the requirement for additional information and has failed to submit the information to the State Engineer's office. The State Engineer concludes that the failure to submit requested information demonstrates the Applicant's lack of interest in pursuing Applications 44751, 44756, 44757 and 44771. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue permits under these circumstances.

### V.

Applications 44751, 44756, 44757 and 44771 were filed primarily for stockwater purposes. The State Engineer concludes that the Applicant does not meet the requirements of NRS § 533.503; therefore, the applications are subject to denial.

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<sup>5</sup> NRS chapters 533 and 534.

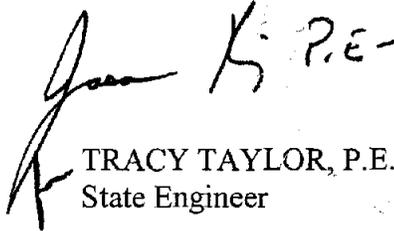
<sup>6</sup> NRS § 533.375.

<sup>7</sup> NRS § 533.370(5).

**RULING**

Applications 44751, 44756, 44757 and 44771 are hereby denied on the grounds their issuance would threaten to prove detrimental to the public interest and would violate the provisions of NRS § 533.503.

Respectfully submitted,

 P.E.

TRACY TAYLOR, P.E.  
State Engineer

TT/TW/jm

Dated this 6th day of  
September, 2007.