

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

IN THE MATTER OF APPLICATION 41420 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF A SURFACE SOURCE WITHIN )  
THE CHURCHILL VALLEY HYDROGRAPHIC )  
BASIN (102), LYON COUNTY, NEVADA. )

RULING

**#5900**

GENERAL

I.

Application 41420 was filed on May 23, 1980, by Hap Magee and later assigned to Andre L. and Vicki D. Beaupre, to appropriate 0.5 cubic feet per second (cfs) of water from Fremont Springs #1 for stockwatering purposes within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 22, T.16N., R.24E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 22.<sup>1</sup>

II.

Application 41420 was timely protested by the U.S. Government, Bureau of Land Management (BLM) on the following grounds:<sup>1</sup>

U.S. Bureau of Land Management needs water to guarantee water availability for all livestock grazing, both present and future. This water is located in the Adriance Valley Allotment and it is estimated that 200 cows will use the allotments year 'round. In addition the water is needed to guarantee water availability for game and nongame wildlife in the area, both present and future.

---

<sup>1</sup> File No. 41420, 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 41420, 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.

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 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.<sup>2</sup>

An examination of the records contained within File No. 41420 show that the BLM has indicated that the point of diversion of Application 41420 is located on the Adrian Valley Allotment and confirmed the Applicant is the current authorized range user/permittee for this allotment.<sup>3</sup> The proposed place of use of Application 41420 is located on patented land owned by the Applicant.

The State Engineer finds that the Applicant is entitled by the proper federal agency to place livestock upon the public range described under the proposed point of diversion of Application 41420.

### III.

The protest indicates that the well is located on public land in a multiple use management area, and livestock grazing and wildlife are two of these uses. 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. In the case of Fremont Springs #1, water is currently available to wildlife and any livestock on the grazing allotment as confirmed via an informal field investigation. It should be pointed out that the Applicant is also the range user for the grazing allotment.

---

<sup>2</sup> NRS § 533.503.

<sup>3</sup> Informal Field Investigation of Fremont Springs #1, March 25, 2008, File No. 41420, official records in the Office of the State Engineer.

The field investigation shows that the spring area no longer expresses itself at the surface. A spring box has been emplaced and water is piped underground from the spring box to a steel stockwatering tank (tank 1) located about 30 feet to the east. Both the spring box and tank 1 are located on public land. The overflow from tank 1 appears to be piped underground a short distance to the east, where it discharges into a second steel stockwatering tank (tank 2). Tank 2 is located on the Applicant's patented land just east of Fremont Springs #1.<sup>3</sup>

By letter dated March 13, 2001, the Applicant explained, "We would agree to always have water available to wildlife as long as the spring is producing. We have no plan to move the place of use except to contain the overflow for livestock use on private property 50 +/- yards to the east."<sup>1</sup>

As currently constructed, the system of diversion works consists of the spring box piped to tank 1 on public land and the overflow from tank 1 piped to tank 2 on the Applicant's property. As such, water is available on public land from tank 1 to satisfy any customary wildlife uses and any grazing allotment needs.

The State Engineer finds that the diversion works that currently exist satisfy the concerns of the Protestant regarding water availability for livestock within the Adrian Valley Allotment and for game and non-game wildlife. The State Engineer further finds that the Applicant is seeking only to capture the overflow water from Fremont Springs #1.

#### IV.

An examination of the records of the Office of the State Engineer, show that there is no additional water right permits,

proofs or claims filed at the proposed point of diversion.<sup>4</sup> The State Engineer finds that there are no existing rights at the proposed point of diversion.

V.

When an application is filed for stockwater use, the amount of water allocated is calculated on the basis of the number and type of animals. For cattle and horses, the amount of water is calculated at 20 gallons per day (gpd) per animal. Application 41420 requests 0.5 cfs, but indicates that it only needs water for 200 head of cattle and horses. For 200 head of livestock, the diversion rate necessary to supply 20 gpd is 0.0062 cfs. Therefore, the maximum amount of water that can be approved under Application 41420 is 0.0062 cfs. The next step is to determine the amount of water that the spring typically produces.

The spring discharge was measured on February 14, 2001, and again on March 25, 2008. Based on those measurements, the flow rate for Fremont Springs #1 is estimated at 0.001 cfs (rounded). This is sufficient to water about 33 head of cattle and horses at 20 gpd.

The State Engineer finds that any appropriation under Application 41420 must be limited to 0.001 cfs or sufficient to water 33 head of cattle and horses.

CONCLUSIONS

I.

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

---

<sup>4</sup> Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, March 26, 2008, official records in the Office of the State Engineer.

<sup>5</sup> NRS chapter 533.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>6</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 approval of Application 41420 would not threaten to prove detrimental to the public interest.

IV.

The State Engineer concludes there is unappropriated water at the source and the proposed use will not conflict with existing rights.

V.

The State Engineer concludes that Application 41420 can be considered for approval under the express condition that the current system of diversion works and storage tanks remain unchanged, with the exception of any system changes pre-approved by the Office of the State Engineer. The State Engineer concludes that under these conditions, the protest claims may be overruled.

---

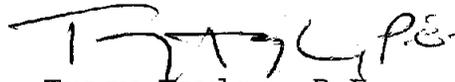
<sup>6</sup> NRS § 533.370(5).

RULING

The protest to Application 41420 is hereby overruled and said application is approved subject to:

1. Existing rights;
2. Payment of the statutory permit fee; and
3. Existing diversion works remain unchanged.

Respectfully submitted,

  
Tracy Taylor, P.E.  
State Engineer

TT/TW/jm

Dated this 23rd day of  
October, 2008.