

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

IN THE MATTER OF APPLICATION )  
60279 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF SHEEP WAGON )  
SPRING WITHIN THE SALMON FALLS )  
CREEK AREA HYDROGRAPHIC )  
BASIN (40), ELKO COUNTY, NEVADA. )

**RULING**  
**# 5967**

**GENERAL**

**I.**

Application 60279 was filed on July 28, 1994, by the Salmon River Cattlemen's Association, Inc., to appropriate 0.013 cubic feet per second of water from Sheep Wagon Spring for stock-watering and domestic purposes within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 2, T.45N., R.63E., 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 2.<sup>1</sup>

**II.**

Application 60279 was timely protested by the U.S.D.I., Bureau of Land Management (BLM) on the following grounds:<sup>1</sup>

1. The water from this spring source is required for multiple use management of the public land. The spring and its Place of Use are on public land.
2. Current BLM policy is to acquire partial interest in the water right when the waters are on public land.
3. BLM will withdraw our protest of this application when partial interest in this water right application is assigned to us.

**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

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<sup>1</sup> File No. 60279, official records in the Office of the State Engineer.

60279, 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.

An examination of the records contained within File No. 60279 show that the BLM has indicated that Application 60279 is located on the Salmon River Allotment and confirmed the Applicant is the current authorized range user/permittee for this allotment, by letter dated November 10, 1994. Additionally, the BLM was requested, March 10, 2005, to advise the Division of any change in status. The BLM response did not indicate any such change. The status of the range user was reconfirmed on February 24, 2009.<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 60279.

## III.

The protest indicates that the spring is located on public land and water from the spring is required for multiple uses. A determination was made, after an examination of the records of the Office of the State Engineer, that there are no additional water right permits, proofs or claims filed at the proposed points of diversion.<sup>2</sup> The State Engineer finds that no other uses of water are permitted at the proposed points of diversion. The State Engineer finds that the BLM, by issuing the Applicant a grazing permit, implicitly considers stock-watering as one of the multiple uses within this area. The State Engineer finds that the application before him requests an appropriation of water for stock-watering purposes only, and that any need for an appropriation of additional water from this spring for any other purpose must be requested through the submittal of a water right application for such purpose.

## IV.

The protest indicates that it is the policy of the BLM to obtain partial interest in this water right. Nevada state law controls both the process and the substance of a proposed appropriation and use of water in the state of Nevada. It is the responsibility of the State Engineer to control the use of the State's water in accordance with the

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<sup>2</sup> Water Rights Township Plats, Township 45 North, Range 63 East, M.D.B.&M., official records in the Office of the State Engineer.

provisions set forth in the Statutes of the state of Nevada.<sup>3</sup> There is no provision in Nevada water law requiring stock-water rights on public land be held in the name of the United States.

The State Engineer finds that this protest claim is without merit and the Applicant is entitled under Nevada water law to file the application in its own name.

### **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 stock-watering is a beneficial use and the Applicant is the current range user of the federal grazing allotment; therefore, the approval of Application 60279 would not threaten to prove detrimental to the public interest.

#### **IV.**

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

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<sup>3</sup> NRS chapters 532 to 538, inclusive, also chapters 540, 543 and 544.

<sup>4</sup> NRS chapters 533 and 534.

<sup>5</sup> NRS § 533.370 (5).

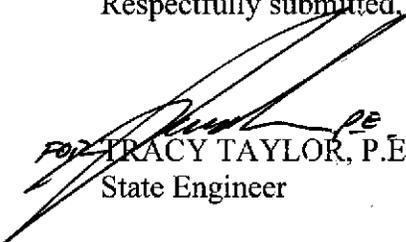
V.

The State Engineer concludes that the protest claims of the BLM are without merit and may be overruled.

**RULING**

The protest to Application 60279 is hereby overruled and said application is approved subject to existing rights and payment of the statutory permit fee.

Respectfully submitted,



FOI- TRACY TAYLOR, P.E.  
State Engineer

TT/TW/jm

Dated this 17th day of

April, 2009.