

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

IN THE MATTER OF APPLICATIONS 70012)
AND 70013 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF SURFACE WATER)
SOURCES WITHIN THE BUENA VISTA)
VALLEY HYDROGRAPHIC BASIN (129,))
PERSHING COUNTY, NEVADA.)

RULING

5989

GENERAL

I.

Application 70012 was filed on May 8, 2003, by Michael Maestri, later assigned to James C. Estill, to appropriate 0.0279 cfs from Hughes Canyon Creek. The proposed manner of use is to provide stock water for 900 head of cattle within portions of Sections 21, 27 and 28, T.25N., R.35E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 27, T.25N., R.35E., M.D.B.&M.¹

II.

Application 70013 was filed on May 8, 2003, by Michael Maestri, later assigned to James C. Estill, to appropriate 0.0279 cfs from Grayson Spring. The proposed manner of use is to provide stock water for 900 head of cattle within Lot 3 of Section 5, T.26N., R.37E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 3 of said Section 5.²

III.

Application 70012 was timely protested by the Bureau of Land Management (BLM), on the following grounds:¹

1. Hughes Canyon Creek occurs in the South Rochester Allotment. This is a common use allotment, which Mr. Maestri shares with three other grazing permittees (Safford and Safford Land and Livestock Co., Frank and John Olagary, and Pleasant Valley Ranch Inc.). The granting of this application to a single entity would complicate the rangeland administration and subordinate the other parties with recognized grazing privileges for this area. There are no formal range line agreements delineating where each party grazes.

¹ File No. 70012, official records in the Office of the State Engineer.

² File No. 70013, official records in the Office of the State Engineer.

2. The waters of Hughes Canyon are also located in the North Stillwater Wild Horse Herd Management Area (HMA). Hughes Canyon represents an important source of water for this herd due to the lack of surface water throughout the area. A wild horse gather was recently completed in this area due to the drought and the resulting forage conditions surrounding the limited water sources. Restricting wild horse use at this source will further damage the rangeland resources at the few remaining sources.
3. The Bureau of Land Management, in cooperation with the State of Nevada Historic Preservation Office, is in the process of evaluating Hughes Canyon as a Traditional Cultural Property (TCP). It is anticipated that this site will be considered eligible for inclusion on the National Register of Historical Places as a Native American TCP due to the proximity and similarity to Cornish Canyon.

IV.

Application 70012 was timely protested by the Lovelock Paiute Tribe - Tribal Council on the following grounds:¹

The springs in Hughs [sic] Canyon have been utilized by Lovelock Paiute Tribal members during the early 1800's and probably before. Tribal rituals and ceremonies were conducted at these springs during Pinyon Harvest. These springs are considered historic, ancestral, and cultural properties of the Lovelock Paiute Tribe. We would not like to see these springs developed in any way.

V.

Application 70013 was timely protested by the BLM on the following grounds:²

1. Grayson Spring occurs in the South Rochester Allotment. This is a common use allotment, which Mr. Maestri shares with three other grazing permittees (Safford and Safford Land and Livestock Co., Frank and John Olagary, and Pleasant Valley Ranch Inc.). The granting of this application to a single entity would complicate the rangeland administration and subordinate the other parties with recognized grazing privileges for this area. There are no formal range line agreements delineating where each party grazes.
2. The waters of Grayson Spring are also located in the North Stillwater Wild Horse Herd Management Area (HMA). Grayson Spring represents an important source of water for this herd due to the lack of surface water throughout the area. A wild horse gather was recently completed in this area due to the drought and the resulting forage conditions surrounding the limited water sources. Restricting wild horse use at this source will further damage the rangeland resources at the few remaining sources.

3. Grayson Spring is a Public Water Reserve (PWR#107). The Nevada State Engineer was notified of this status on January 17, 1991. This notification is on file in the State Engineer's office under file number R05218. It is unlikely that Grayson Spring can provide enough water to satisfy the needs of the PWR and the .0279 cfs currently being requested.

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 a water right application. The State Engineer finds that in the case of Applications 70012 and 70013, there is no need to supplement the records of the Office of the State Engineer with testimony and evidence relating to these applications and their associated protests.

II.

Nevada Revised Statute 533.503 provides that the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless the applicant for the permit is legally entitled to place livestock on the lands for which the permit is sought.

Both the proposed points of diversion and places of use described by the Applicant are located within the South Rochester Allotment. At the request of the Office of the State Engineer, James C. Estill provided information that verified that he was the current range user associated with this allotment.¹

The State Engineer finds that James C. Estill is entitled by the proper federal agency to place livestock upon the public range described under the subject applications.

III.

It is the BLM's contention that the granting of Applications 70012 and 70013 would complicate the rangeland administration and subordinate the other parties with recognized grazing privileges for this area.

Every water right permit that is issued by the State Engineer contains conditions that are included within the permit terms. One such permit term, which is commonly applied to stock watering permits, states, "This permit is issued with the express understanding and on the condition

that existing grazing use of the public range by authorized users or permittees will not be impaired or adversely affected by approval and issuance of this permit.”

In addition, any authorized range user that qualifies under NRS § 533.503, may request a permit to appropriate water for the purpose of watering livestock in accordance with Nevada Water Law.

The State Engineer finds that sufficient protection exists within the water right permitting process to protect any additional range users on the federal grazing allotment where the surface water sources are located. A second finding is made that multiple water right applications may be considered for a single surface water source, in those instances where multiple range users are authorized by the BLM to share a common allotment.

IV.

The BLM has also expressed in its protests a concern regarding the continued use of the waters of Hughes Canyon Creek and Grayson Spring by the local wild horse population.

Absent of any physical restrictions, wild horses 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 horses may or may not choose to water at a particular source and the use may be consistent or sporadic depending upon range conditions.

The State Engineer finds that the applications in question request appropriations of surface water for stock watering purposes and that any need for an additional appropriation of water for wild horses can be requested through the submittal of a water right application for that purpose.

V.

The third point raised by the BLM centers upon a potential conflict between the development of Hughes Canyon Creek for stock watering purposes and its preservation as a Traditional Cultural Property.

While the safeguarding of the historic, ancestral, and cultural properties of the Lovelock Paiute Tribe is not among the duties assigned to the State Engineer, guidance in this matter is provided by other state and federal agencies. The State Engineer finds that the issuance of any permit derived from Application 70012 does not waive the requirements that the permit holder obtain other permits from the State, Federal and local agencies.

VI.

Application 70013 was protested in part on the grounds that Grayson Spring was claimed as a public water reserve (PWR). The grounds for this portion of the BLM's protest have been extensively and fully considered and ruled upon in prior proceedings.³ The State Engineer finds in this matter that Application 70013 and the issue of PWR 107 existing on Grayson Spring is similar to the issues already ruled upon and makes the same findings by reference

VII.

A spring flow measurement was taken at Grayson Spring by representatives of the Nevada Division of Water Resources on September 18, 2008, and recorded a flow of approximately 8.5 gallons per minute. If this flow rate is expanded over a 24 hour period the daily flow of Grayson Spring equates to 12,240 gallons. Having exceeded the 1,800 gallons per day threshold, Grayson Spring is recognized as an important spring, which merits consideration as a PWR. However the validity and extent of this claim must be made through the State Engineer's formal adjudication process. If the PWR 107 claim is determined to be valid, the State Engineer finds that it shall be recognized as such and any permit would be subject to the prior reserved right established under R-05218.

VIII.

With the exception of R-05218 and Application 70013, there are no other active water right filings that appropriate water from Grayson Spring. The same holds true for Hughes Canyon Creek, in that, the only other active filing being Proof V-09780 is held by the Applicant. It has also been determined that the waters of said sources are not tributary to larger stream systems. The State Engineer finds under these circumstances that the approval of Applications 70012 and 70013 would not conflict with existing water rights.

CONCLUSIONS

I.

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

³ See, State Engineer's Ruling Nos. 3219, 4706 and 5729, official records in the Office of the State Engineer.

⁴ NRS chapter 533.

II.

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

- 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 State Engineer concludes that the issue of a public water reserve has already been considered in previous rulings and adopts the same conclusions by reference.

IV.

The State Engineer concludes that stock watering is a beneficial use and that the Applicant is the current range user; therefore, the approval of Applications 70012 and 70013 would not threaten to prove detrimental to the public interest.

RULING

The protests to Applications 70012 and 70013 are hereby overruled and Applications 70012 and 70013 are approved subject to exiting rights and the timely payment of the statutory permit fees.

Respectfully submitted,



TRACY TAYLOR, P.E.

for State Engineer

TT/MB/jm

Dated this 4th day of

June, 2009.

⁵ NRS § 533.370(5).