

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

IN THE MATTER OF APPLICATION 79872)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE DIXIE VALLEY HYDROGRAPHIC)
BASIN (128), PERSHING COUNTY, NEVADA.)

RULING
#6092

GENERAL

I.

Application 79872 was filed on May 26, 2010, by Mike and Barbara Stremler to appropriate 0.0094 cubic feet per second of underground water for the stock watering of 300 head of cattle within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.25N., R.37E., M.D.B.&M. The proposed point of diversion is described by the Applicant as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 25.¹

II.

Application 79872 was timely protested by Michael Truden, as an agent for the U. S. Bureau of Land Management (BLM) on the following grounds:¹

The point of diversion, as described in the NDWR water rights database, occurs on public land managed by the Bureau of Land management, Humboldt River Field Office. The Mike and Barbara Stremler (Applicants) has expressed a preliminary interest in applying for these rights, but the Applicants have not yet applied for authorization to enter public land for the purposes of diverting water at this location. It will be necessary for the Applicants to secure a right of way or other authorization to protect the public land and to ensure that reclamation of any surface disturbance related to the works of diversion are completed.

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 hearing is necessary to address the merits of a protest to a water right application. The State Engineer finds that in the case of Application 79872, there is no need to

¹ File No. 79872, official records in the Office of the State Engineer.

supplement the records of the Office of the State Engineer with testimony and evidence relating to this application and its associated protest.

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.

The proposed point of diversion and place of use described by the Applicant are located within the Jersey Valley Grazing Allotment. Information on file with the Office of the State Engineer verify that Mike and Barbara Stremler through Jersey Valley Company are the current range users associated with this allotment.¹

The State Engineer finds that Mike and Barbara Stremler are entitled by the BLM to place livestock upon the public range described under the subject application.

III.

Every permit that is issued by the State Engineer contains a set of conditions that establishes the guidelines under which the appropriation of water can occur. Those permits that are issued for appropriations of underground water for stock watering purposes often are conditioned with the provision that the approval of the permit does not waive any requirements that may be imposed by local, state or federal agencies. Application 79872 was protested on the grounds that there are currently no right-of-way or authorization agreements in place for the Applicant's project. The State Engineer finds that Application 79872 can be approved with the understanding that the Applicant is not relieved of the requirements or released from authorizations from the Bureau of Land Management.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³

² NRS Chapters 533 and 534.

³ NRS § 533.370(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 stock watering is a beneficial use and that the Applicant is the current range user; therefore, the approval of Application 79872 would not threaten to prove detrimental to the public interest.

IV.

The proposed point of diversion requested under Application 79872 is an existing well whose waters are not currently appropriated under any valid permitted water rights. The State Engineer concludes that the approval of Application 79872 would not conflict with existing water rights.

RULING

The protest to Application 79872 is overruled and Application 79872 is hereby approved subject to existing rights and the timely payment of the statutory permit fee.

Respectfully submitted,


Jason King, P.E.
State Engineer

Dated this 15th day of
February, 2011.