

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

IN THE MATTER OF APPLICATION 60659 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNNAMED SPRING, )  
WITHIN THE THOUSAND SPRINGS )  
VALLEY, TOANO-ROCK SPRING AREA )  
HYDROGRAPHIC BASIN (189B), ELKO )  
COUNTY, NEVADA. )

**RULING**

**#6153**

**GENERAL**

**I.**

Application 60659 was filed on November 16, 1994, by Walker-Winecup-Gamble, Inc., to appropriate 0.009 cubic feet per second (cfs), not to exceed 4 gallons per minute (gpm), of water from an unnamed spring for stockwater purposes within the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 26, T.39N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 26.<sup>1</sup>

**II.**

Application 60659 was timely protested by the United States Department of the Interior, Bureau of Land Management (BLM) on the following grounds:<sup>1</sup>

1. This spring source is located on public land and is needed for multiple use management.
2. The area has a checkerboard land ownership pattern. Most of the water sources are located on private land; therefore, this spring is crucial to insure a public water source in the southern half of the allotment to facilitate grazing distribution and wildlife habitat.
3. This spring is a Public Water Reserve (PWR) which was reserved by Executive Order 107 on April 17, 1926. Water is needed for 300 cattle. Approximately 35 mule deer, 20 elk, and 40 pronghorn antelope also use this spring.

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<sup>1</sup> File No. 60659, 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 60659, 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 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>2</sup> The State Engineer finds that there are no existing water rights at the proposed point of diversion, beyond the Protestant's claim of a Public Water Reserve No. 107 (PWR 107).

### III.

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

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<sup>2</sup> Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, November 1, 2011.

- (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 that the Applicant is entitled by the proper federal agency to place livestock upon the public range described under Application 60659.

#### IV.

The Protestant was asked to provide additional information including the flow of the springs. In response, the BLM indicated that spring flow measurements taken on July 21, 1980, April 10, 1995, and May 19, 2009, were 0.5 gpm, 9 gpm, and 6 gpm, respectively. The State Engineer finds that the flow data indicates there is water available for appropriation.

#### V.

Nevada Revised Statute (NRS) § 533.367 provides that before a person may obtain a right to the use of water from a spring, the person must ensure that wildlife, which customarily use the water, will have access to it.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</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 protectable 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.

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<sup>3</sup> NRS Chapter 533.

<sup>4</sup> NRS § 533.370(5).

**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 60659 would not threaten to prove detrimental to the public interest.

**IV.**

The State Engineer concludes there is insufficient evidence in this record to determine if the water sources described under Application 60659 meet the criteria of a PWR 107, as outlined in State Engineer's Ruling No. 5729. The extent and validity of the reserved claim may only be determined after a general adjudication of all water rights, if and when such proof of claims are filed and adjudicated. If the PWR 107 claim is determined to be valid, it shall be recognized and any permit granted would be subject to the prior reserved right.

**V.**

The State Engineer concludes the purpose for which water was reserved under PWR 107 is general public use limited to human and stockwater consumption by grazing permittees and if a source has a legitimate PWR 107 claim on it, it is only the minimal quantity of water necessary to accomplish the purpose of the reservation.<sup>5</sup>

**VI.**

The State Engineer concludes that the granting of Application 60659 will not conflict with any minimal quantity of water required that may be reserved by PWR 107, if such reserved right exists at the source.

**VII.**

The purpose of the Executive Order creating PWR 107 was to prevent competing range users from monopolizing the public range through the control of isolated and important springs. With the advent of grazing allotments controlled by the BLM, such competition has been eliminated. Under the current system, only authorized range users possessing a grazing permit issued by the BLM are authorized on designated allotments. The State Engineer concludes that to issue a stockwater right to

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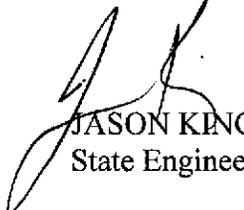
<sup>5</sup> State Engineer's Ruling No. 5729, April 27, 2007, official records in the Office of the State Engineer.

an authorized range user, is consistent with the primary purpose of use of water under a PWR 107 claim.

**RULING**

The protest to Application 60659 is hereby overruled and the application is approved subject to existing rights and payment of the statutory permit fee.

Respectfully submitted,

 P.E.  
JASON KING, P.E.  
State Engineer

Dated this 2nd day of  
December, 2011.