

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

IN THE MATTER OF APPLICATIONS 81310,)
81311, 81312, 81313, 81314, 81315, 81316, 81317,)
81318, 81319, 81320, 81321, 81322, 81323, 81324,)
81325, 81326, 81327, 81328, 81329, 81330 AND)
81331 FILED TO APPROPRIATE THE PUBLIC)
WATERS OF VARIOUS SURFACE AND)
UNDERGROUND SOURCES WITHIN THE)
RALSTON VALLEY HYDROGRAPHIC BASIN)
(141), BIG SMOKY VALLEY – TONOPAH)
FLAT HYDROGRAPHIC BASIN (137A), AND)
STONE CABIN VALLEY HYDROGRAPHIC)
BASIN (149), NYE COUNTY, NEVADA.)

RULING

#6204

GENERAL

I.

Application 81310 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.05 cubic foot per second (cfs) of water from Baxter Spring for stockwater purposes within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T.6N., R.44E., SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.7N., R.43E., and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T.7N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.7N., R.43E., M.D.B.&M.¹

II.

Application 81311 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 1.0 cfs of water from Spanish Springs for stockwater purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T.7N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T.7N., R.44E., M.D.B.&M.²

III.

Application 81312 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 1.0 cfs of water from Humphrey Spring for stockwater purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T.7N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 16.³

¹ File No. 81310, official records in the Office of the State Engineer.

² File No. 81311, official records in the Office of the State Engineer.

³ File No. 81312, official records in the Office of the State Engineer.

IV.

Application 81313 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.25 cfs of underground water from Ray's Well for stockwater purposes within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T.4N., R.42E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 12.⁴

V.

Application 81314 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.25 cfs of water from Frazier Spring for stockwater purposes within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, T.4N., R.42E., 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 35.⁵

VI.

Application 81315 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.05 cfs of underground water for stockwater purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T.3N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 17.⁶

VII.

Application 81316 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.031 cfs of underground water from Highway Well for stockwater purposes within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T.3N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 36.⁷

VIII.

Application 81317 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.031 cfs of underground water from Spanish Well for stockwater purposes within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T.7N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 36.⁸

IX.

Application 81318 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 1.0 cfs of underground water from South Well for stockwater purposes within the

⁴ File No. 81313, official records in the Office of the State Engineer.

⁵ File No. 81314, official records in the Office of the State Engineer.

⁶ File No. 81315, official records in the Office of the State Engineer.

⁷ File No. 81316, official records in the Office of the State Engineer.

⁸ File No. 81317, official records in the Office of the State Engineer.

SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T.1N., R.45E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 19.⁹

X.

Application 81319 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.50 cfs of underground water from Pine Creek Well for stockwater purposes within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, T.2N., R.45E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 21.¹⁰

XI.

Application 81320 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.50 cfs of underground water from Salisbury Well for stockwater purposes within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.2N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 15.¹¹

XII.

Application 81321 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.10 cfs of underground water from Silver Creek Well for stockwater purposes within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, T.8N., R.45E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 17.¹²

XIII.

Application 81322 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.25 cfs of underground water from San Antone Pass Well for stockwater purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, T.6N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 22.¹³

XIV.

Application 81323 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.25 cfs of underground water from Graham Well for stockwater purposes within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, T.4N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 5.¹⁴

⁹ File No. 81318, official records in the Office of the State Engineer.

¹⁰ File No. 81319, official records in the Office of the State Engineer.

¹¹ File No. 81320, official records in the Office of the State Engineer.

¹² File No. 81321, official records in the Office of the State Engineer.

¹³ File No. 81322, official records in the Office of the State Engineer.

¹⁴ File No. 81323, official records in the Office of the State Engineer.

XV.

Application 81324 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.25 cfs of underground water for stockwater purposes within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T.5N., R.43E., 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 22.¹⁵

XVI.

Application 81325 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.031 cfs of underground water from Well No. 2 for stockwater purposes within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 31.¹⁶

XVII.

Application 81326 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.031 cfs of underground water from Cornell Well for stockwater purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T.3N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 16.¹⁷

XVIII.

Application 81327 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.031 cfs of underground water from Well No. 3 for stockwater purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 9.¹⁸

XIX.

Application 81328 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.031 cfs of underground water from Airport Well for stockwater purposes within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T.2N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 19.¹⁹

XX.

Application 81329 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.031 cfs of underground water from Henry's Well for stockwater and domestic

¹⁵ File No. 81324, official records in the Office of the State Engineer.

¹⁶ File No. 81325, official records in the Office of the State Engineer.

¹⁷ File No. 81326, official records in the Office of the State Engineer.

¹⁸ File No. 81327, official records in the Office of the State Engineer.

¹⁹ File No. 81328, official records in the Office of the State Engineer.

purposes within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T.5N., R.44E., 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 7.²⁰

XXI.

Application 81330 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.31 cfs of underground water from Salusbury Well for stockwater purposes within the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T.3N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 10.²¹

XXII.

Application 81331 was filed on November 16, 2011, by Gary Snow Livestock and Grain to appropriate 0.031 cfs of underground water from Black Rock Well for stockwater purposes within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T.4N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 16.²²

XXIII.

These applications were timely protested by various persons and entities in part on the grounds that the Applicant does not have a valid grazing permit for the associated public land grazing allotments and on other grounds not considered in this ruling.¹⁻²²

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 533.503 provides, in part, 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. For public lands, this is generally evidenced by a valid grazing permit from the proper land management agency, such as the United States Bureau of Land Management (BLM).

The Applicant was requested by certified mail dated October 18, 2012, to submit additional information regarding the water applications to the Office of the State Engineer. Specifically, the Applicant was asked to provide a copy of a valid grazing permit for the public land grazing allotments associated with the requested appropriations of water. The Applicant provided a response to the request for information and indicated that it was one of several applicants to apply for a grazing permit, but to date, there has been no award of the grazing

²⁰ File No. 81329, official records in the Office of the State Engineer.

²¹ File No. 81330, official records in the Office of the State Engineer.

²² File No. 81331, official records in the Office of the State Engineer.

permit. The Applicant further indicated that he did not believe any permit would be awarded in the near future. The Applicant noted that he has been authorized to graze under a Temporary Non Use and feels that if and when a decision is made he is "...definitely in the running for the award of this Permit."

The BLM is one of the many Protestants to the applications. The BLM protest states, in part, that the Applicant does not have a grazing permit. Based on the information provided by the Applicant and the BLM, the State Engineer finds that, at this time, the Applicant does not have a grazing permit for the public lands associated with the water applications. The State Engineer finds that a "Temporary Non Use" to graze is not sufficient to issue permanent water rights. The State Engineer finds that the Applicant is not legally entitled to place livestock upon the public lands as required under NRS § 533.503 and further finds that to approve a permit for stockwatering when the Applicant is not authorized to use the public lands for grazing would threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:²⁴

- 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.

III.

The State Engineer concludes that the Applicant does not meet the requirements of NRS § 533.503; therefore, Applications 81310, 81311, 81312, 81313, 81314, 81315, 81316, 81317, 81318, 81319, 81320, 81321, 81322, 81323, 81324, 81325, 81326, 81327, 81328, 81329, 81330

²³ NRS Chapter 533 and 534.

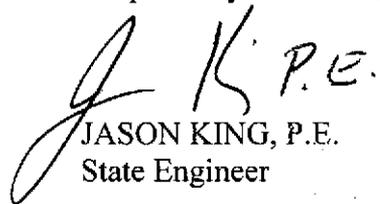
²⁴ NRS § 533.370 (2).

and 81331 are subject to denial. The State Engineer concludes that the approval of the applications threatens to prove detrimental to the public interest.

RULING

Applications 81310, 81311, 81312, 81313, 81314, 81315, 81316, 81317, 81318, 81319, 81320, 81321, 81322, 81323, 81324, 81325, 81326, 81327, 81328, 81329, 81330 and 81331 are hereby denied under the provisions of NRS § 533.503 and that the approval of the applications would threaten to prove detrimental to the public interest. No ruling is made on the merits of the remaining protest issues.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 29th day of

November, 2012.