

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

IN THE MATTER OF APPLICATIONS 76565 )  
AND 76576 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF SPRING 11 AND )  
SPRING 21, RESPECTIVELY, WITHIN THE )  
STEPTOE VALLEY HYDROGRAPHIC BASIN )  
(179), WHITE PINE COUNTY, NEVADA. )

**RULING**

**#6237**

**GENERAL**

**I.**

Application 76565 was filed on December 24, 2007, by the Blue Diamond Oil Corp., to appropriate 0.0116 cubic feet per second (cfs) of a surface water source described as Spring 11 for the stockwatering of 1,872 head of sheep and lambs. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, T.16N., R.65E., M.D.B.&M. The proposed place of use is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 7.<sup>1</sup>

**II.**

Application 76576 was filed on December 24, 2007, by the Blue Diamond Oil Corp. to appropriate 0.0116 cfs of a surface water source described as Spring 21, for the stockwatering of 1,872 head of sheep and lambs. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 31, T.16N., R.65E., M.D.B.&M. The proposed place of use is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 31.<sup>2</sup>

**III.**

Applications 76565 and 76576 were timely protested by the United States Forest Service Humboldt Toiyabe National Forest (USFS) on the following grounds as summarized below:<sup>1,2</sup>

1. Existing water rights within the Steptoe Valley groundwater basin, exceed the groundwater basin's estimated perennial yield.
2. The Blue Diamond Oil Corp. is not authorized to construct what is being proposed by the Applicant, which will prevent it from achieving a beneficial use of the water that has been requested.

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<sup>1</sup> File No. 76565, official records in the office of the State Engineer.

<sup>2</sup> File No. 76576, official records in the office of the State Engineer.

## FINDINGS OF FACT

### I.

Nevada Revised Statutes (NRS) § 533.365(4) provides that it is within the State Engineer's discretion to determine whether a public hearing is necessary to address the merits of a protested application to appropriate the public waters of the State of Nevada. The State Engineer finds that 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 in this matter is not required.

### II.

Under the provisions of NRS § 533.503(1), the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock upon the public land unless the applicant for the permit is legally entitled to place livestock upon the public lands for which the permit is sought. By utilizing the United States Forest Service's Toiyabe Humboldt National Forest Ely District Office website, the State Engineer determined that the Applicant holds the necessary grazing permit encompassing the proposed points of diversion and places of use. Therefore, the State Engineer finds that the Applicant is legally entitled to place livestock on public lands for which the permit is sought.

### III.

Every permit issued by the State Engineer contains conditions that establish the guidelines under which the appropriation of water can occur. Permits issued for stock-watering purposes often include the condition that approval of the permit does not waive any requirement, which may be imposed by other state or federal agencies. Applications 76565 and 76576 were protested partly on the grounds that the Applicant is not authorized by the USFS to develop the range improvements associated with proposed project. The State Engineer finds that the approval of Applications 76565 and 76576 will not release the Applicant from any range improvement obligations that are required by the federal government.

### IV.

The State Engineer finds that the subject applications request appropriations of surface water and that their approval would not increase the amount of underground water committed under existing water right permits and certificates issued by the Office of the State Engineer.

V.

The records of the Office of the State Engineer contain the history of water right filings throughout the state. Once the location of a proposed point of diversion has been identified a search of these records can determine if there are any pre-existing water rights at this site. A review of these records indicates that there are no senior water rights on either Spring 11 or Spring 21, confirming there are no potential water use conflicts.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and 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 conflicts with existing rights;
- C. the proposed use conflicts with protectable 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.

Applications 76565 and 76576, if approved, would allow the current grazing permittee to appropriate water for stock watering purposes upon public land. The State Engineer concludes that the Applicant has met the criteria established under NRS § 533.503 and that the approval of the subject applications would not threaten to prove detrimental to the public interest.

IV.

The proposed points of diversion requested under Applications 76565 and 76576 are alpine springs whose waters are not currently appropriated under any other senior permitted water rights. The State Engineer concludes that the approval of the applications would not conflict with existing rights.

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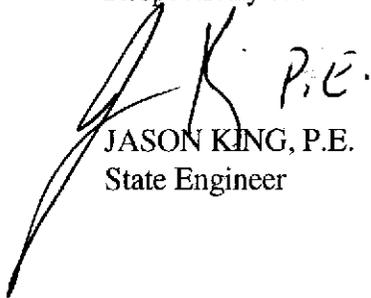
<sup>3</sup> NRS Chapter 533.

<sup>4</sup> NRS § 533.370(2).

**RULING**

The protests to Applications 76565 and 76576 are hereby overruled and Applications 76565 and 76576 are approved subject to existing rights and the payment of the statutory permit fees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JK P.E.', is written over the typed name.

JASON KING, P.E.  
State Engineer

Dated this 16th day of  
September, 2013.