

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

IN THE MATTER OF APPLICATIONS )  
72990, 72991, 72992, 72993, 72994, 72995, )  
72996, 72997, 72998 AND 72999 FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF )  
MOSS SPRING, LITTLE COTTONWOOD )  
WEST SPRING, LITTLE COTTONWOOD )  
MIDDLE SPRING, LITTLE COTTONWOOD )  
EAST SPRING, LEDGE SPRING SOUTH, )  
LEDGE SPRING NORTH, ELEPHANT )  
HEAD SPRING 8, ELEPHANT HEAD )  
SPRING 1, COTTON WOOD BASIN )  
SPRING AND BUCK BRUSH SPRING )  
LOCATED WITHIN THE MIDDLE REESE )  
RIVER VALLEY HYDROGRAPHIC BASIN )  
(58), LANDER COUNTY, NEVADA. )

**RULING**

**#5952**

**GENERAL**

**I.**

Application 72990 was filed on July 7, 2005, by U.S.D.I., Bureau of Land Management to appropriate 0.00526 cubic foot per second (cfs) of water from Moss Spring for wildlife purposes. The proposed place of use is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 15, T.27N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 15.<sup>1</sup>

**II.**

Application 72991 was filed on July 7, 2005, by U.S.D.I., Bureau of Land Management to appropriate 0.00526 cfs of water from Little Cottonwood West Spring for wildlife purposes. The proposed place of use is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 3, T.26N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 3.<sup>2</sup>

**III.**

Application 72992 was filed on July 7, 2005, by U.S.D.I., Bureau of Land Management to appropriate 0.00526 cfs of water from Little Cottonwood Middle Spring for wildlife purposes.

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<sup>1</sup> File No. 72990, official records in the Office of the State Engineer.

<sup>2</sup> File No. 72991, official records in the Office of the State Engineer.

The proposed place of use is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 3, T.26N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 3.<sup>3</sup>

#### IV.

Application 72993 was filed on July 7, 2005, by U.S.D.I., Bureau of Land Management to appropriate 0.00526 cfs of water from Little Cottonwood East Spring for wildlife purposes. The proposed place of use is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 3, T.26N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 3.<sup>4</sup>

#### V.

Application 72994 was filed on July 7, 2005, by U.S.D.I., Bureau of Land Management to appropriate 0.00526 cfs of water from Ledge Spring South for wildlife purposes. The proposed place of use is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, T.27N., 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 26.<sup>5</sup>

#### VI.

Application 72995 was filed on July 7, 2005, by U.S.D.I., Bureau of Land Management to appropriate 0.00526 cfs of water from Ledge Spring North for wildlife purposes. The proposed place of use is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, T.27N., 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 26.<sup>6</sup>

#### VII.

Application 72996 was filed on July 7, 2005, by U.S.D.I., Bureau of Land Management to appropriate 0.00526 cfs of water from Elephant Head Spring 8 for wildlife purposes. The proposed place of use is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 9, T.26N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 10, T.26N., R.44E., M.D.B.&M.<sup>7</sup>

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<sup>3</sup> File No. 72992, official records in the Office of the State Engineer.

<sup>4</sup> File No. 72993, official records in the Office of the State Engineer.

<sup>5</sup> File No. 72994, official records in the Office of the State Engineer.

<sup>6</sup> File No. 72995, official records in the Office of the State Engineer.

<sup>7</sup> File No. 72996, official records in the Office of the State Engineer.

### VIII.

Application 72997 was filed on July 7, 2005, by U.S.D.I., Bureau of Land Management to appropriate 0.00526 cfs of water from Elephant Head Spring 1 for wildlife purposes. The proposed place of use is described as being located within the NW¼ NE¼ of Section 16, T.26N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NE¼ of said Section 16.<sup>8</sup>

### IX.

Application 72998 was filed on July 7, 2005, by U.S.D.I., Bureau of Land Management to appropriate 0.00526 cfs of water from Cottonwood Basin Spring for wildlife purposes. The proposed place of use is described as being located within the NW¼ NW¼ of Section 10, T.26N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of said Section 10.<sup>9</sup>

### X.

Application 72999 was filed on July 7, 2005, by U.S.D.I., Bureau of Land Management to appropriate 0.00526 cfs of water from Buck Brush Spring for wildlife purposes. The proposed place of use is described as being located within the NE¼ SW¼ and the NW¼ NW¼ of Section 13, T.27N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of said Section 13.<sup>10</sup>

### XI.

Applications 72990, 72991, 72992, 72993, 72994, 72995, 72996, 72997, 72998 and 72999 were timely protested by Nevada Department of Agriculture on the following grounds:<sup>1-10</sup>

1. NRS 533.030 requires that issued water rights must be put to a recognized "beneficial use." NRS 501.100 states, in part, that "Wildlife in this state not domesticated and in its natural habitat is part of the natural resources belonging to the people of the State of Nevada." NRS 501 further declares that administration of these wildlife populations is the responsibility of the State Wildlife Commission and the Nevada Department of Wildlife. Based on these authorities, the USDI Bureau of Land Management (BLM) cannot demonstrate beneficial use of the requested water. As such, this water right application will unduly complicate the respective role of each agency and should be denied.
2. NRS 533.085 establishes a policy where applications for new water rights cannot impair existing vested water rights. Pre-existing water rights encumber the surface waters that are the subject of the protested application and no

<sup>8</sup> File No. 72997, official records in the Office of the State Engineer.

<sup>9</sup> File No. 72998, official records in the Office of the State Engineer.

<sup>10</sup> File No. 72999, official records in the Office of the State Engineer.

information is contained in the application to indicate that approval of this application will not affect these existing rights. Therefore, granting this application would violate NRS 533.085

3. NRS 533.367 requires that before a person may obtain a water right from a spring source, he must ensure that wildlife which customarily use the water must have access to it. This statute eliminates the need for the Bureau of Land Management to be granted the permit.
4. In the past, the Department of Conservation and Natural Resources through the Division of Water Resources, has made adequate provisions for water for wildlife in granting of applications to private individuals and such provisions can be included at the time of final adjudication of the area.
5. Protestant does not protest the application for water for wild horses administrated by BLM, however, any such application must be within a designated herd management area and must not be to the detriment of vested or other prior water rights. Application for water for wild horses by BLM should specifically designate wild horses as the purpose and not lump horses and wildlife under "wildlife purposes".

## XII.

Applications 72990, 72991, 72992, 72993, 72994, 72995, 72996, 72997, 72998 and 72999 were timely protested by Ellison Ranching Company on the following grounds:<sup>1-10</sup>

1. The protestant claims a vested stock water right on the source, because their predecessors have used the area for livestock grazing since prior to 1905. This is an undocumented but valid and enforceable vested water right.
2. NRS 533.085(1) provides that "[n]othing containing in [NRS Chapter 533] shall impair the vested water right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of [NRS Chapter 533] where appropriations have been initiated in accordance with law prior to March 22, 1913." The challenged application, Application Number 72990, [72991, 72992, 72993, 72994, 72995, 72996, 72997, 72998 and 72999] was filed pursuant to NRS Chapter 533 and will impair the Protestant's vested water right. Therefore, granting Application 72990, [72991, 72992, 72993, 72994, 72995, 72996, 72997, 72998 and 72999] would violate NRS 533.085(1).
3. NRS 533.370(4) similarly provides, in pertinent part, that where a proposed use or change conflicts with existing rights, "the State Engineer shall reject the application and refuse to issue the requested permit." In the present case, Application number 72990, [72991, 72992, 72993, 72994, 72995, 72996, 72997, 72998 and 72999] if approved, would conflict with the Protestant's existing vested water right. Therefore, granting Application number 72990, [72991,

72992, 72993, 72994, 72995, 72996, 72997, 72998 and 72999] would violate NRS 533.370(4).

### XIII.

Applications 72990, 72991, 72992, 72993, 72994, 72995, 72996, 72997, 72998 and 72999 were timely protested by Lander County Board of Commissioners on the following grounds:<sup>1-10</sup>

Lander County protests BLM's application for appropriating the public waters of Lander County. The application seeks to appropriate water for wildlife purposes. Lander Count asserts that the BLM application is inappropriate because Nevada Revised Statues require the State Engineer to ensure that water from spring sources customarily utilized by wildlife remain available for wildlife. See NRS 535.367. Because the State Engineer is required to ensure that wildlife have access to spring and seep water, there is no reason for the BLM to seek water appropriation as requested through this application.

### XIV.

Applications 72990, 72991, 72992, 72993, 72994, 72995, 72996, 72997, 72998 and 72999 were timely protested by Hank and Marian Filippini Family Trust dated 12/21/03 on the following grounds:<sup>1-10</sup>

1. The protestant and its successor claim a vested stock water right on the source, because their predecessors have used the area for livestock grazing since prior to 1905. This is an undocumented but valid and enforceable vested water right and the right is for all of the water production of the source.
2. NRS 533.085(1) provides that "nothing contained in (NRS Chapter 533) shall impair the vested water right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provision of (NRS Chapter 533) where appropriations have been initiated in accordance with law prior to March 22, 1913." The challenged application was filed pursuant to NRS Chapter 533 and will impair the Protestant's water right. Therefore, granting this application would violate NRS 533.085(1).
3. The Nevada Division of Wildlife is responsible for the management of wildlife and granting of this application to the Bureau of Land Management will unduly complicate the role of each agency.
4. NRS 501.181 provides that the Wildlife Commission will prescribe policies for the acquisition of water rights for wildlife management and the Commission has not taken such action on this source.

5. In the past the Department of Conservation and Natural Resources through the Division of Water Resources has made adequate provisions for wildlife in granting applications to private individuals and such provisions can be included at the time of final adjudication of the area.
6. NRS 533.367 requires that before a person may obtain a water right from a spring, he must ensure that wildlife which customarily use the water must have access to it. The statute eliminates the need for the Bureau of Land Management to be granted the permit.
7. NRS 533.370(4) provides in pertinent part, that where a proposed use or change conflicts with existing rights, "the State Engineer shall reject the application and refuse to issue the requested permit." In the present case, the application, if approved would conflict with the Protestant's vested water right. Therefore, granting the application would violate NRS 533.370(4).
8. Granting the application will give to the Bureau of Land Management unneeded control over wildlife in the area.
9. The Nevada Supreme Court ruled in that case entitled State Bd. of Agriculture v. Morros, 104 Nev. 709, that applications by agencies of the United States to appropriate water for beneficial uses pursuant to their land management functions must be treated on an equal basis with the applications by private landowners. Wildlife water is not a land management function.

### **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.<sup>11</sup> The State Engineer finds that in the case of protested Applications 72990, 72991, 72992, 72993, 72994, 72995, 72996, 72997, 72998 and 72999, 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 are also proofs and claims filed at the proposed points of diversion.<sup>12</sup> The existing water rights at the proposed points of diversion are Vested Right Proofs for stock-water. The proofs are V-09655<sup>13</sup>

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<sup>11</sup> NRS § 533.365(3).

<sup>12</sup> Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, September 23, 2008.

<sup>13</sup> File No. V-09655, official records in the Office of the State Engineer.

on Moss Spring; V-09656<sup>14</sup> on Little Cottonwood West Spring; V-09657<sup>15</sup> on Little Cottonwood Middle Spring; V-09658<sup>16</sup> on Little Cottonwood East Spring; V-09659<sup>17</sup> on Ledge Spring South; V-09660<sup>18</sup> on Ledge Spring North; V-09661<sup>19</sup> on Elephant Head Spring 8; V-09662<sup>20</sup> on Elephant Head Spring 1; V-09663<sup>21</sup> on Cottonwood Basin Spring and V-09664<sup>22</sup> on Buck Brush Spring.

Proofs V-09655, V-09656, V-09657, V-09658, V-09659, V-09660, V-9661, V-09662, V-09663 and V-09664 differ from the permitted water rights in that they are claims of historic use of the waters of the springs associated with each proof that occurred prior to the establishment of the State Engineer's permitting system in 1905. The claims of an 1889 priority date for the use of spring water for stock-watering purposes has not been adjudicated to determine its validity and extent, but they are still considered an active filing. The Proofs were filed by Ellison Ranching Company for stock-watering purposes.

There are also Public Water Reserve Claims; R-09514<sup>23</sup>, R-09515<sup>24</sup>, R-09516<sup>25</sup>, R-09517<sup>26</sup>, R-09518<sup>27</sup>, R-09519<sup>28</sup>, R-09520<sup>29</sup> and R-09521<sup>30</sup> filed on all except two of the proposed points of diversion. The Public Water Reserve Claims were filed by the U.S.D.I., Bureau of Land Management for human and animal use.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>31</sup>

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<sup>14</sup> File No. V-09656, official records in the Office of the State Engineer.

<sup>15</sup> File No. V-09657, official records in the Office of the State Engineer.

<sup>16</sup> File No. V-09658, official records in the Office of the State Engineer.

<sup>17</sup> File No. V-09659, official records in the Office of the State Engineer.

<sup>18</sup> File No. V-09660, official records in the Office of the State Engineer.

<sup>19</sup> File No. V-09661, official records in the Office of the State Engineer.

<sup>20</sup> File No. V-09662, official records in the Office of the State Engineer.

<sup>21</sup> File No. V-09663, official records in the Office of the State Engineer.

<sup>22</sup> File No. V-09664, official records in the Office of the State Engineer.

<sup>23</sup> File No. R-09514, official records in the Office of the State Engineer.

<sup>24</sup> File No. R-09515, official records in the Office of the State Engineer.

<sup>25</sup> File No. R-09516, official records in the Office of the State Engineer.

<sup>26</sup> File No. R-09517, official records in the Office of the State Engineer.

<sup>27</sup> File No. R-09518, official records in the Office of the State Engineer.

<sup>28</sup> File No. R-09519, official records in the Office of the State Engineer.

<sup>29</sup> File No. R-09520, official records in the Office of the State Engineer.

<sup>30</sup> File No. R-09521, official records in the Office of the State Engineer.

<sup>31</sup> NRS chapter 533.

**II.**

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>32</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 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 evidence provided with Proofs V-09655, V-09656, V-09657, V-09658, V-09659, V-09660, V-09661, V-09662, V-09663 and V-09664 stated that appropriation of water started as early as 1878, but claim 1889 as their priority date.

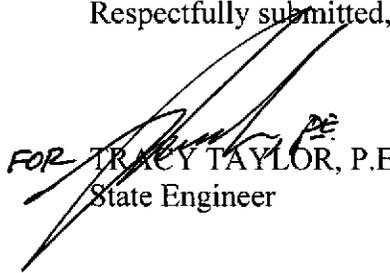
The State Engineer concludes Nevada Revised Statute § 533.085 (1) provides that:

Nothing contained in this chapter shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this chapter where appropriations have been initiated in accordance with law prior to March 22, 1913.

**RULING**

Applications 72990, 72991, 72992, 72993, 72994, 72995, 72996, 72997, 72998 and 72999 are hereby denied on the grounds that the granting thereof would conflict with existing rights.

Respectfully submitted,

  
FOR TRACY TAYLOR, P.E.  
State Engineer

TT/JED/jm

Dated this 12th day of  
February, 2009.

<sup>32</sup> NRS § 533.370(5).