

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

IN THE MATTER OF APPLICATION 68766)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE CHURCHILL)
VALLEY HYDROGRAPHIC BASIN (102),)
LYON COUNTY, NEVADA.)

RULING

#5308

GENERAL

I.

Application 68766 was filed on May 2, 2002, by Don Alt to appropriate 0.016 cubic feet per second of water from Stockton Flat Well, an underground source, for stockwatering purposes within Sections 3-10, 15-22, 29, 30 and portions of the N½ of Section 28, T.18N., R.24E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NE¼ of said Section 28.¹

II.

Application 68766 was timely protested by the U.S.D.I., Bureau of Land Management (BLM) on the following grounds:¹

The applicant has filed for a water right permit for livestock use on public land. It is the policy of BLM Nevada that livestock water rights located on public land administered by the BLM will either be (1) acquired solely in the name of the United States, or (2) acquired jointly in the name of the United States and the holder of the public land grazing allotment. The applicant will not be able to apply the water to beneficial use without BLM authorization to develop the water on public land.

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

¹ File No. 68766, official records in the Office of the State Engineer.

State of Nevada. The State Engineer finds that a hearing is not necessary to consider the merits of the protest filed by the BLM.

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 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
(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.

On May 5, 2003, the State Engineer's office sent a letter to the BLM requesting information regarding the applicant's status as a grazing permittee within the place of use described under Application 68766. The BLM responded by letter dated October 7, 2003, as follows:¹

This is in response to your May 5, 2003 letter related to the water permit application by Don Alt for the Stockton Flat Well. This water source is in the Stockton Flat Allotment where Mr. Alt has a valid grazing permit. The copy of the permit he sent is the first page of the grazing permit, which was approved on November 17, 1999 by the Carson City Assistant Manager, Renewable Resources.

The State Engineer finds that the applicant is entitled by the proper federal agency to place livestock upon the public range described under Application 68766.

III.

Application 68766 was protested by the BLM, in part, on the grounds that the applicant will not be able to apply the water to beneficial use without BLM's

authorization to develop the water on public land. The Stockton Flat Well is an existing well that has been used to water livestock for many years. An affidavit provided by the applicant from one Bert Perondi states in part, "I graduated from high school in 1939 and we were pumping water from that well long before that time. Before I returned from World War II my uncle had a windmill installed."¹ It would be illogical to believe the BLM would approve a grazing permit and not allow the permittee to use water from an existing well that has been historically used for stockwater purposes by past grazing permittees. The State Engineer finds that the BLM's approval of the applicant's grazing permit carries an implicit approval to develop the water necessary to support the livestock. The State Engineer further finds that the historic use of this well for watering livestock demonstrates the applicant's ability to place the water to beneficial use.

IV.

Application 68766 was protested by the BLM, in part, on the grounds that it is the policy of BLM Nevada that livestock water rights located on public land administered by the BLM will either be (1) acquired solely in the name of the United States, or (2) acquired jointly in the name of the United States and the holder of the public land grazing allotment. The position of the BLM implies that they have the authority to distribute the State's water to livestock operators exclusive of the requirements of Nevada Water Law. Nevada state law controls both the process and the substance of a proposed appropriation and use of water in the State of Nevada. It is the responsibility of the State Engineer to control the use of the State's water in accordance with the provisions set forth in the Statutes of the State of Nevada.² The State Engineer finds there are no provisions under Nevada Water Law to support the protest claim of the BLM.

V.

A determination was made, after an examination of the records of the Office of the State Engineer, that there are no additional water right permits, proofs or claims filed at the proposed point of diversion except for a claim of vested right filed by the

² NRS chapters 532 to 538, inclusive, also chapters 540, 543 and 544.

applicant.³ The State Engineer finds that the approval of Application 68766 would not conflict with existing water rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where: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 stockwatering is a beneficial use and the applicant is the current range user of the federal grazing allotment; therefore, the approval of Application 68766 would not threaten to prove detrimental to the public interest.

IV.

The State Engineer concludes there is unappropriated water at the source and the proposed use will not conflict with existing rights.

V.

The State Engineer concludes that the protest claims of the BLM are without merit and contrary to Nevada Water Law.

³ Water Rights Township Plats, Township 18 North, Range 24 East, M.D.B.&M., official records in the Office of the State Engineer.

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.370 (3).

RULING

The protest to Application 68766 is hereby overruled and said application is approved subject to payment of the statutory permit fees.

Respectfully submitted,


Hugh Ricci, P.E.
State Engineer

HR/TW/jm

Dated this 18th day of
November, 2003.