

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

IN THE MATTER OF APPLICATIONS)
37851, 37852, 37856, AND 58488 FILED)
TO APPROPRIATE THE PUBLIC)
WATERS OF UNNAMED SPRING NO.)
23, UNNAMED SPRING NO. 24,)
CHEVELIER SPRING NO. 2 AND COLD)
SPRINGS NO. 2 WITHIN THE BRUNEAU)
RIVER AREA HYDROGRAPHIC BASIN)
(38) AND THE SALMON FALLS CREEK)
AREA HYDROGRAPHIC BASIN (40),)
ELKO COUNTY, NEVADA.)

RULING
#5436

GENERAL

I.

Application 37851 was filed on April 10, 1979, by McCormick Brothers, and later assigned to the U.S.D.I., Bureau of Land Management to appropriate 0.5 cubic feet per second (cfs) of water from Unnamed Spring No. 23 for stockwater purposes within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T.42N., R.58E., 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 25.¹

II.

Application 37852 was filed on April 10, 1979, by McCormick Brothers, and later assigned to the U.S.D.I., Bureau of Land Management to appropriate 0.5 cfs of water from Unnamed Spring No. 24 for stockwater purposes within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T.42N., R.58E., 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 25.²

III.

Application 37856 was filed on April 10, 1979, by McCormick Brothers, and later assigned to the U.S.D.I., Bureau of Land Management to appropriate 0.5 cfs of water from Chevelier Spring No. 2 for stockwater purposes within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8,

¹ File No. 37851, official records in the Office of the State Engineer.

² File No. 37852, official records in the Office of the State Engineer.

T.42N., R.58E., 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 8.³

IV.

Application 58488 was filed on January 19, 1993, by Dan and Sharon K. Niedringhaus, and later assigned to the U.S.D.I., Bureau of Land Management and Brackett Ranches Limited Partnership to appropriate 0.0155 cfs of water from Cold Springs No. 2 for stockwatering and domestic purposes within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 12, NW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 35, T.44N., R.61E., 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 Section 25, T.44N., R.61E., M.D.B.&M.⁴

FINDINGS OF FACT

I.

In 2003, the Nevada Legislature amended NRS § 533.503 to provide, in part, that:

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 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.

³ File No. 37856, official records in the Office of the State Engineer.

⁴ File No. 58488, official records in the Office of the State Engineer.

The law clearly states that the State Engineer shall not issue a permit to appropriate water for livestock unless the applicant 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. The State Engineer finds the BLM does not own, lease or otherwise possess a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought and is therefore not qualified to obtain a stockwater permit under Nevada Water Law.

II.

Application 58488 was filed jointly between private individuals and the BLM. The State Engineer finds that when an application is filed jointly, all parties on the joint application must meet the provisions of NRS § 533.503. Since the State Engineer has already found the BLM is not qualified to obtain a stockwater permit, the State Engineer finds that joint Application 58488 cannot be approved.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- 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 threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that Nevada Water Law prohibits the State Engineer from issuing a permit to appropriate water for livestock unless the applicant owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to

⁵ NRS chapter 533.

⁶ NRS § 533.370 (4).

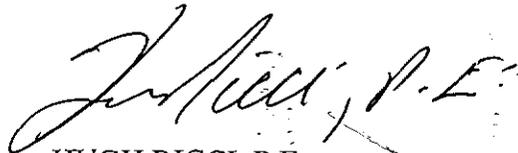
Ruling
Page 4

be placed on the lands for which the permit is sought, and since the BLM does not meet this requirement, the subject applications must be denied in accordance with NRS §533.503.

RULING

Applications 37851, 37852, 37856 and 58488 are hereby denied under the provisions of NRS § 533.503.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 22nd day of
October, 2004.