

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

IN THE MATTER OF APPLICATION)
61193 FILED TO CHANGE THE PLACE)
OF USE AND MANNER OF USE OF A)
PORTION OF UNDERGROUND WATER)
PREVIOUSLY APPROPRIATED UNDER)
PERMIT 58366 WITHIN THE CRESCENT)
VALLEY HYDROGRAPHIC BASIN (54),)
LANDER COUNTY, NEVADA.)

RULING

#5509

GENERAL

I.

Application 61193 was filed on May 1, 1995, by Cortez Joint Venture to change the place of use and manner of use of 0.0078 cubic feet per second, a portion of water previously appropriated under Permit 58366. The proposed manner and place of use is for stockwatering purposes within the S½ NE¼ and N½ SE¼ of Section 6, T.27N., R.47E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ Section 6, T.27N., R.47E., M.D.B.&M.¹

II.

Application 61193 was timely protested by the U.S.D.I. Bureau of Land Management (BLM) on the following grounds:¹

The waters in question are in the Carico Lake Grazing Allotment (BLM livestock grazing area). Cortez Joint Venture is a mining company and is not a licensed livestock operator within this allotment. Therefore, stock watering, in this situation, is not an appropriate use for a mining company on public lands administered by the USDI-BLM.

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. 61193, 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.

Under the provisions of NRS § 533.503, the State Engineer shall not issue a permit for the purpose of watering livestock upon the public land unless the applicant for the permit is legally entitled to place livestock on the public lands for which the permit is sought.² On February 5, 2004, the BLM informed the State Engineer that Application 61193 is within the Carico Lake Grazing Allotment and Cortez Joint Venture is recognized as a current permittee on the Carico Lake Grazing Allotment. The State Engineer finds that the applicant is entitled by the proper federal agency to place livestock upon the public range that is serviced by the well source described under Application 61193. The State Engineer further finds that the grounds of the protest are no longer valid.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- 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.

² NRS § 533.503(1).

³ NRS chapters 533 and 534.

⁴ NRS § 533.370 (4).

III.

The State Engineer concludes that stockwatering is a beneficial use and that the applicant is a current range user on the grazing allotment; therefore, the approval of Application 61193 would not threaten to prove detrimental to the public interest. The State Engineer further concludes that the grounds of the protest are without merit.

RULING

The protest to Application 61193 is hereby overruled and said application is hereby approved subject to:

1. The payment of the statutory permit fees and
2. All other existing rights.

Respectfully submitted,



Hugh Ricci, P.E.
State Engineer

HR/TW/jm

Dated this 9th day of
September, 2005.