

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

IN THE MATTER OF APPLICATION)
60454 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF A SURFACE)
SOURCE WITHIN THE GABBS VALLEY)
HYDROGRAPHIC BASIN (122),)
MINERAL COUNTY, NEVADA.)

RULING

#5530

GENERAL

I.

Application 60454 was filed on September 14, 1994, by the United States of America, Bureau of Land Management (BLM) to appropriate 0.0162 cubic feet per second of water from Stone Cabin Spring, a surface source, for stockwater purposes within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T.8N., R.35E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 9.¹

FINDINGS OF FACT

I.

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

1. 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 the 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

¹ File No. 60454, official records in the Office of the State Engineer.

- (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 gazing permit, that is issued by the appropriate governmental entity to the applicant for the permit.²

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 60454 was filed for stockwater purposes. Under Item #4(c) and Remarks section of the application, the applicant listed various wildlife that may also utilize the spring. This includes wild horses, deer, antelope, big horns, coyotes and songbirds etc. A water right application may only be filed for one purpose;³ however, it is not uncommon for an applicant to note wildlife use on a stockwater application. Absent of any physical restrictions, wildlife will water at various water sources within their range independent of ownership or the stated beneficial use of a water right. If water is available, the wildlife may or may not choose to water at a particular source and the use may be consistent or sporadic depending on numerous environmental factors. In the case of a spring, a person may not obtain a right to the use of water unless it is ensured that wildlife, which customarily uses the water, will have access to it.⁴

The State Engineer finds that the application before him requests an appropriation of surface water for stockwater purposes, as the one purpose allowed under NRS § 533.330, as stated on the application. The State Engineer further finds that Nevada water law provides protection for wildlife that customarily use water at the spring.

CONCLUSIONS

I.

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

² NRS § 533.503.

³ NRS § 533.330.

⁴ NRS § 533.367.

⁵ NRS chapter 533.

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 Application 60454 was filed for stockwater purposes.

IV.

The State Engineer concludes that the applicant does not meet the requirements of NRS § 533.503; therefore, the application is subject to denial.

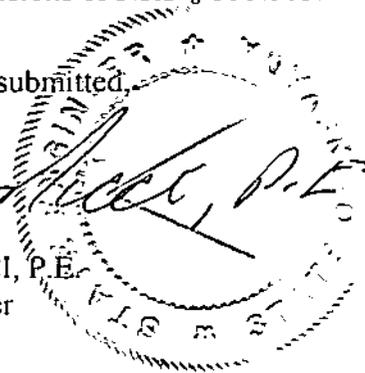
RULING

Application 60454 is hereby denied under the provisions of NRS § 533.503.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer



HR/TW/jm

Dated this 19th day of
September, 2005.

⁶ NRS § 533.370(4).