

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

IN THE MATTER OF APPLICATIONS 44800)
AND 44802 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE BLACK ROCK)
DESERT, HYDROGRAPHIC BASIN (28),)
HUMBOLDT COUNTY, NEVADA.)

RULING
5549

GENERAL

I.

Application 44800 was filed on October 29, 1981, by the Bureau of Land Management, Winnemucca District (BLM) to appropriate 0.025 cubic feet per second (cfs) of water from Stolen Well, an underground source, for stockwater purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T.41N., R.28E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13.¹

II.

Application 44802 was filed on October 29, 1981, by the Bureau of Land Management Winnemucca District (BLM) to appropriate 0.015 cfs of water from John Cator Well, an underground source, for stockwater purposes within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T.41N., R.31E., 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 3.²

III.

Application 44800 and Application 44802 were timely protested by the Pine Forest Land and Livestock Company and John Cator, respectively, on grounds not considered in this ruling.

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 File No. 44800, official records in the Office of the State Engineer.

² File No. 44802, official records in the Office of the State Engineer.

- (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.

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.

Applications 44800 and 44802 were filed for stockwater purposes. Under Item #4(b) of Application 44800, regarding water use, the applicant stated the number and kind of animals as “340 cattle and misc. wildlife species” and on Application 44802, “150 cattle and misc. wildlife species”. 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 an underground source of water being pumped to the surface for use by livestock, the water is simultaneously available for use by various wildlife.

The State Engineer finds that the applications before him request an appropriation of underground water for stockwater purposes, as the one purpose allowed under NRS § 533.330, and that any need for an appropriation of additional water for wildlife purposes can be requested through the submittal of a water right application for such purpose.

³ NRS § 533.330.

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 threatens to prove detrimental to the public interest.

III.

The State Engineer concludes Applications 44800 and 44802 were filed for stockwater purposes.

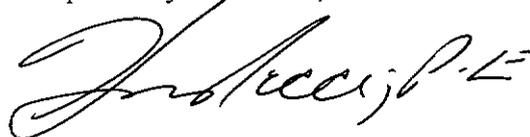
IV.

The State Engineer concludes that the BLM does not meet the requirements of NRS § 533.503; therefore, the applications are subject to denial.

RULING

Applications 44800 and 44802 are hereby denied under the provisions of NRS § 533.503. No ruling is made on the merits of the protests.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 30th day of
January, 2006.

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.370(4).