

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

IN THE MATTER OF APPLICATION 44847 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE IMLAY)
AREA HYDROGRAPHIC BASIN (72), PERSHING)
COUNTY, NEVADA.)

RULING
5617

GENERAL

I.

Application 44847 was filed on October 29, 1981, by the United States Department of Interior, Bureau of Land Management (BLM) to appropriate 0.02 cubic feet per second of water from an underground source for stockwater, wildhorses, wildlife, and domestic purposes. The proposed place of use is described as being located within the E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 1, T.33N., R.36E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 1.¹

II.

Application 44847 was timely protested by Vern Heckman and William H. Casey on grounds not considered in this ruling.¹

FINDINGS OF FACT

I.

The Applicant was notified by certified mail dated December 14, 2005, to submit additional information regarding interest in pursuing Application 44847 to the Office of the State Engineer. Specifically, Application 44847 was filed for stockwater, wildhorses, wildlife, and domestic purposes. In light of existing Nevada water law (NRS § 533.503) regarding the issuance of stockwater applications, the Applicant was given the opportunity to amend the application through the deletion of stockwater. This would allow for Application 44847 to be considered for wildhorses, wildlife, and domestic purposes only. The limitation of this course of action was explained in the certified notice. Several other options were suggested including the option of doing nothing. The Applicant was warned that failure to respond or to take some other action within 30 days could result in denial of the applications.¹

¹ File No. 44847, official records in the Office of the State Engineer.

The U.S. Postal Service returned properly endorsed certified mail receipts to the Office of the State Engineer on December 19, 21, and 22, 2005.¹ To date, the Applicant has failed to respond or take any action that would allow the application process to move forward.

The State Engineer finds that the Applicant was properly notified of the request for additional information regarding Application 44847 and failed to respond.

II.

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
 - (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.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.³

² NRS chapters 533 and 534.

³ NRS § 533.375.

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water 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.

IV.

The Applicant was properly notified of the requirement for additional information and has failed to submit the information to the State Engineer's office. The State Engineer concludes that the failure to submit the requested information demonstrates the Applicant's lack of interest in pursuing Application 44847. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

V.

Application 44847 was filed, in part, for stockwater purposes. 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 44847 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest and would violate 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 26th day of

May, 2006.

⁴ NRS § 533.370(5).