

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

IN THE MATTER OF APPLICATION 44769)
FILED TO APPROPRIATE THE PUBLIC)
WATERS FROM AN UNDERGROUND)
SOURCE WITHIN THE LITTLE SMOKY)
VALLEY HYDROGRAPHIC BASIN (155C),)
NYE COUNTY, NEVADA.)

RULING

#5640

GENERAL

I.

Application 44769 was filed on October 29, 1981, by the United States Bureau of Land Management (BLM) to appropriate 0.01 cubic feet per second of water from underground source for livestock/wildlife/wild horses watering purposes within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ (Lots 3 and 4) of Section 1, T.8N., R.52E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T.8N., R.52E., M.D.B.&M.¹

II.

Application 44769 was timely protested by Pierre Paris on grounds not addressed by this ruling.

FINDINGS OF FACT

I.

Application 44769 was filed to appropriate underground water on lands administrated by the BLM. The State Engineer finds that a determination was made through an examination of the records in the Office of the State Engineer that there are no other permitted, vested or reserved water rights within the N $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T.8N., R.52E., M.D.B.&M.

II.

Nevada Revised Statute § 533.503 provides, 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 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

¹ File No. 44769, official records in the Office of the State Engineer.

- (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 that the applicant is not legally entitled to place livestock upon the federal lands compromising the point of diversion and place of use under Application 44769. The State Engineer finds to approve a permit for stockwatering when the applicant is not authorized to use the lands for grazing would threaten to prove detrimental to the public interest.

III.

On June 20, 2005 the BLM was contacted by letter and, informed that Application 44769 could not be permitted with livestock included in a manner of use. However, should the BLM remove the livestock use from Application 44769 it could be considered for wildlife as a manner of use for antelope and wildhorses.¹ The BLM responded on July 22, 2005, requesting that the indicated references to livestock and cattle be deleted from Application 44769. The State Engineer finds that with the removal of livestock purposes from Application 44769, the State Engineer can consider the application for approval.

IV.

By certified mail dated June 20, 2005, Pierre Paris, the protestant, was requested by the Office of the State Engineer to submit written evidence of a continued interest in protesting Application 44769. The Protestant was advised that a response to this request must be received in the Office of the State Engineer within thirty days from the date of this letter. The Protestant was also advised that a failure to respond within this allotted time period would be taken as an indication that by removing the livestock use from the permit it would satisfy the protestant or it would be taken as an indication that the protestant was no longer interested in protesting the application.¹ The Office of the State Engineer received a signed certified mail receipt on June 30, 2005. As of this date, Pierre Paris has not written to express an interest in pursuing his protest. The State Engineer finds that Pierre Paris is not interested in pursuing his protest.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³

- 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.

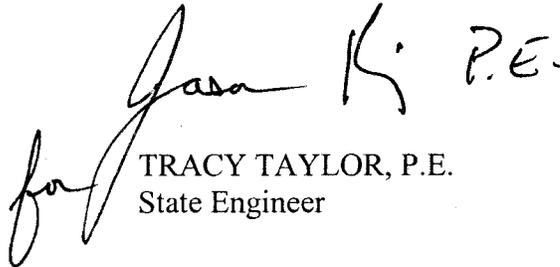
III.

The State Engineer concludes there is unappropriated water at the proposed source, the use will not conflict with existing rights or protectible interests in existing domestic wells or threaten to prove detrimental to the public interest.

RULING

Application 44769 is hereby approved subject to existing rights and the payment of statutory permit fees. No ruling made on the merits of the protest.

Respectfully submitted,


TRACY TAYLOR, P.E.
State Engineer

TT/WHR/jm

Dated this 11th day of
August, 2006.

² NRS chapter 533 and 534.

³ NRS § 533.370(5).