

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

IN THE MATTER OF APPLICATION 36501)
FILED TO APPROPRIATE THE OF USE OF)
THE PUBLIC WATERS OF A SURFACE)
SOURCE WITHIN THE HOT CREEK)
VALLEY HYDROGRAPHIC BASIN (156),)
NYE COUNTY, NEVADA.)

RULING

#5868

GENERAL

I.

Application 36501 was filed on January 19, 1979, by Joe B. [Sr.], Helen Fallini and Joe B. Fallini, Jr., to appropriate 0.02 cubic feet per second of water from Cow Spring. The proposed point of diversion, place of use and manner of use is described as being for stockwater purposes, including 200 head of cattle and 25 head of horses, and located within the SE¼ SW¼ of Section 18, T.4N., R.50E., M.D.B.&M. ¹

II.

Application 36501 was protested by the U.S. Government, Bureau of Land Management (BLM) on the following grounds:¹

Cow Spring is on public land administered by the Bureau of Land Management. The spring is used yearlong by 23 antelope and 2144 cattle.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 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 State of Nevada. The State Engineer finds that in the case of protested Application 36501, there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

¹ File No. 36501, official records in the Office of the State Engineer.

II.

Before any diversion of water may be made from a spring, the appropriator must make application to and obtain from the State Engineer, a permit to appropriate the water.² An examination of the records of the Office of the State Engineer shows that there is one additional water right claim filed at the proposed point of diversion.³ This claim was filed by the BLM on November 3, 1993, under Proof R-06071 for 300 livestock. The State Engineer finds that other than Proof R-0607, there are no other existing or pending water rights at the proposed point of diversion.

III.

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.

By email dated November 8, 2007, the BLM indicated that Application 36501 is located in the Reveille Range Allotment. This email also confirmed the Applicant is the authorized range user for an unspecified number of cattle, but has no permit to water

² NRS § 534.050(3).

³ Nevada Division of Water Resources Water Rights Database, Special Hydrographic Abstract.

domestic horses.¹ The State Engineer finds that the Applicant is entitled by the proper federal agency to place livestock upon the public range described under Application 36501.

IV.

The State Engineer finds the BLM's protest did not assert any issue of fact or law that would prevent the granting of this application.

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 conflicts with existing rights;
- C. the proposed use 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 that stockwatering is a beneficial use and the Applicant is the current range user of the federal grazing allotment; therefore, the approval of Application 36501 would not threaten to prove detrimental to the public interest.

IV.

The State Engineer concludes that the proposed use will not conflict with existing rights.

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.370(5).

V.

The State Engineer concludes that Federal BLM permitting requirements would not be annulled by the issuance of a water right permit to the Applicant and therefore; the protest is without merit.

RULING

The protest to Application 36501 is hereby overruled and said application is approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/WHR/jm

Dated this 30th day of
June, 2008.