

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

IN THE MATTER OF APPLICATIONS 59916,)
59917, 59918 AND 59919 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN)
THE RUBY VALLEY HYDROGRAPHIC)
BASIN (176), ELKO COUNTY, NEVADA.)

RULING

5998

GENERAL

I.

Application 59916 was filed on April 12, 1994, by the United States Fish and Wildlife Service (USFWS) to appropriate 0.01 cubic feet per second (cfs) of water from Windmill Well #1964-1 for wildlife purposes within the boundaries of Ruby Lake National Wildlife Refuge located within portions of T.25, 26, 27N., all within R.57E., and T.25, 26, 27, 28N., all within R.58E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 22, T.28N., R.58E., M.D.B.&M.¹

II.

Application 59917 was filed on April 12, 1994, by the USFWS to appropriate 0.01 cfs of water from Windmill Well #1964-2 for wildlife purposes within the boundaries of Ruby Lake National Wildlife Refuge located within portions of T.25, 26, 27N., all within R.57E., and T.25, 26, 27, 28N., all within R.58E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 28, T.27N., R.58E., M.D.B.&M.²

III.

Application 59918 was filed on April 12, 1994, by the USFWS to appropriate 0.01 cfs of water from Windmill Well #1964-3 for wildlife purposes within the boundaries of Ruby Lake National Wildlife Refuge located within portions of T.25, 26, 27N., all within R.57E., and T.25, 26, 27, 28N., all within R.58E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 16, T.26N., R.58E., M.D.B.&M.³

¹ File No. 59916, official records in the Office of the State Engineer.

² File No. 59917, official records in the Office of the State Engineer.

³ File No. 59918, official records in the Office of the State Engineer.

IV.

Application 59919 was filed on April 12, 1994, by the USFWS to appropriate 0.01 cfs of water from Windmill Well #1970-1 for wildlife purposes within the boundaries of Ruby Lake National Wildlife Refuge located within portions of T.25, 26, 27N., all within R.57E., and T.25, 26, 27, 28N., all within R.58E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 5, T.26N., R.58E., M.D.B.&M.⁴

V.

Applications 59916, 59917, 59918 and 59919 were timely protested by the Elko County Board of Commissioners on the following grounds:^{1,2,3,4}

The Board of County Commissioners protest the abovenoted [sic] application relating to the Ruby Lake National Wildlife Refuge on the grounds the Shanty Town development is not being considered, grazing rights have not been considered, and Elko County water usage has not been determined to the beneficial use for all of the Elko County citizens.

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 Applications 59916, 59917, 59918 and 59919, there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and an administrative hearing on this matter is not required.

II.

The Protestant alleges that the Shanty Town development is not being considered. Applications 59916, 59917, 59918 and 59919 can be considered for a total appropriation of water sufficient to water 125 head of wildlife. The standard duty for antelope and deer is four (4) gallons per day per head and the standard duty for elk is twenty (20) gallons per day per head. This equates to a combined total requested appropriation of approximately 0.829 acre-foot annually (afa) at a combined diversion rate of 0.040 cfs. This amount is substantially less than the quantity of water allowed for one domestic well (2.00 afa) for which no permit is required.⁵

⁴ File No. 59919, official records in the Office of the State Engineer.

⁵ NRS § 534.180.

The State Engineer finds that Nevada Water Law does not prevent him from granting permits for applications later in time that may cause a reasonable lowering of the static water level in a prior appropriator's well in a particular area.⁶ The State Engineer further finds that the deminimus quantity applied for in the applications would not be of such a quantity that there would be an unreasonable lowering of the static water level and would not impair existing ground-water rights in the Ruby Valley Hydrographic Basin.

III.

The Protestant alleges that the grazing rights have not been considered. The State Engineer found above that the quantity of water applied for under the subject applications is deminimus. The State Engineer finds that the approval of the subject applications for a deminimus quantity of water for the watering of wildlife will not adversely impact grazing rights.

IV.

The Protestant alleges that Elko County water usage has not been determined to the beneficial use for all of the Elko County citizens. NRS § 533.023 provides that the use of water for wildlife purposes includes the watering of wildlife and the establishment of and maintenance of wetlands, fisheries and other wildlife habitats. Nevada Revised Statute § 533.365(1) requires that a protestant must set forth its protest ground with reasonable certainty. The State Engineer finds no basis or foundation that would dictate a finding that the USFWS may not appropriate water for the beneficial purpose of watering wildlife, and finds that Nevada Water Law recognizes this purpose as a beneficial use.

V.

After an examination of the records of the Office of the State Engineer, a determination was made that Claim of Federal Reserved Water Right No. R09676, filed by the USFWS on November 1, 1989, for wildlife purposes includes two of the four windmill wells in addition to 39 springs. In the claim there is no specification to which two of the four wells are claimed as a reserved right.⁷ A review of Claim R09676 will be included in the adjudication of the surface waters of the Ruby Valley Hydrographic Basin currently in process. Other than Claim R09676,

⁶ NRS § 534.110(5).

⁷ File No. R09676, official records in the Office of the State Engineer.

there are no additional water right permits, proofs or claims filed for the proposed water source under Applications 59916, 59917, 59918 and 59919.⁸

The State Engineer finds neither the Protestant nor any other party, other than the Applicant, has a valid water right at the proposed point of diversion of Applications 59916, 59917, 59918 and 59919.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁹

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:¹⁰

- 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.

Applications 59916, 59917, 59918 and 59919 request approximately 0.829 afa of underground water from the Ruby Valley Hydrographic Basin. The State Engineer concludes that there is unappropriated water at the source sufficient to satisfy the minimal requirements of the requested appropriations and said appropriations will not conflict, interfere with, or impair the value of existing rights.

IV.

Applications 59916, 59917, 59918 and 59919 request, in part, an appropriation of underground water for the purposes of watering antelope and other wildlife by the USFWS. Nevada Water Law recognizes this purpose as a beneficial use within the confines of state law. The State Engineer concludes that approval of the subject applications for wildlife purposes would not threaten to prove detrimental to the public interest.

⁸ Water Rights Database, Hydrographic Abstract, official records in the Office of the State Engineer.

⁹ NRS chapters 533 and 534.

¹⁰ NRS § 533.370(5).

V.

The State Engineer concludes that there is no basis or foundation to support the position of the Protestant; therefore, the protest may be overruled.

RULING

The protests to Applications 59916, 59917, 59918 and 59919 are hereby overruled and Applications 59916, 59917, 59918 and 59919 are approved for wildlife purposes only, subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/KWC/jm

Dated this 31st day of

July, 2009.