

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

IN THE MATTER OF APPLICATION 76493)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE GRASS VALLEY)
HYDROGRAPHIC BASIN (71), PERSHING)
COUNTY, NEVADA.)

RULING

6012

GENERAL

I.

Application 76493 was filed on November 16, 2007, by Larry A. Hiibel to appropriate 0.0062 cubic feet per second of water from an underground source for stockwatering purposes within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, W $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, T.32N., R.38E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 3 of Section 1, T.31N., R. 38E., M.D.B.&M.¹

II.

Application 76493 was timely protested by the United States Department of Interior, Bureau of Land Management, Winnemucca Field Office (BLM), on the following grounds:¹

The source of water described under application 76493 is an existing artesian well located on public land (as described by the water right survey). The construction of this well has not been authorized, and is subject to trespass proceedings if the applicant cannot or will not satisfy the regulations found at 43 CFR 2800. The Bureau of Land Management will be further guided in this matter by the regulations found at 43 CFR 9237.1. The applicant is currently in arrears with this office due to unauthorized livestock grazing.

The State Engineer has previously sought information regarding authorized grazing use in this area. Additional information has been provided by the applicant and is attached in the form of a notarized affidavit (from the applicant) and a newspaper article

¹ File No. 76493, official records in the Office of the State Engineer.

that appeared in the Humboldt Sun in the February 22-25, 2008 edition. Please note the highlighted sections.

FINDINGS OF FACT

I.

Nevada Revised Statutes § 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 sufficient evidence is available in the Office of the State Engineer to evaluate the merits of Application 76493 and a hearing is not necessary.

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.

Attached to the protest is a sworn affidavit by the Applicant stating that, "I have no livestock branded to me in Pershing County."²

The State Engineer finds that the Applicant 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; therefore, the Applicant is not qualified to obtain a stock-water permit under Nevada water law.

III.

Although the proposed place of use is located on private land, the well is located on public land managed by the BLM. The construction of the well was not authorized by the land manager and is subject to trespass proceedings.³ The State Engineer finds that the Applicant does not have access to the well and therefore, would be unable to place any water to beneficial use.

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 or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the Applicant does not meet the requirements of NRS § 533.503; therefore, the application is subject to denial.

² See, *Affidavit in Support of "Refusal of Fraud,"* File No. 76493, official records in the Office of the State Engineer.

³ See, BLM protest to Application 76493, official record in the Office of the State Engineer.

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.370(5).

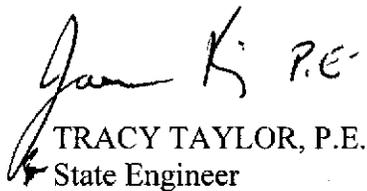
IV.

The State Engineer concludes the Applicant does not have access to the proposed point of diversion; therefore, approval of the application under this circumstance would threaten to prove detrimental to the public interest.

RULING

The protest is upheld in part and Application 76493 is hereby denied on the grounds that its approval would violate the provisions of NRS § 533.503 and threaten to prove detrimental to the public interest.

Respectfully submitted,


TRACY TAYLOR, P.E.
State Engineer

Dated this 11th day of
September, 2009.