

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

IN THE MATTER OF APPLICATION )  
26376 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF A SURFACE )  
WATER SOURCE WITHIN THE RUBY )  
VALLEY HYDROGRAPHIC BASIN )  
(176), ELKO COUNTY, NEVADA. )

**RULING**  
**#6089**

**GENERAL**

**I.**

Application 26376 was filed on October 22, 1971, by the Bureau of Land Management (BLM) to change the place of use of 0.007 cubic feet per second (cfs), a portion of the unadjudicated pre-statutory vested water claimed by the United States Forest Service of the water of South Spring for stock-watering (500 cattle, 50 horses) purposes. The proposed place of use is described as being located within the NW¼ NW¼ of Section 14 and the SW¼ NW¼ of Section 13, T.31N., R.59E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 10, T.31N., R.59E., M.D.B.&M.<sup>1</sup>

**II.**

Application 26376 was timely protested by M. L. Tate on the grounds that the Protestant was granted the right to appropriate 1.0 cfs from South Spring for irrigation and domestic purposes under Permit 25420, which is prior to and senior to the water right claimed under V- 02677 and that the Protestant has senior vested rights on South Spring.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

Claim of Vested Water Right V-02677 was filed in the name of the United States Forest Service. Application 26376 was filed in the name of the United States Bureau of Land Management. The State Engineer finds the Applicant does not have title to the water right it seeks to change.

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<sup>1</sup> File No. 26376, official records in the Office of the State Engineer.

## II.

Information found in File No. 26376 indicates that an agreement was to be reached between the Applicant and Protestant regarding the waters of South Spring. By letter dated July 7, 1972, the State Engineer indicated he would withhold his ruling on Application 26376 for 30 days pending receipt of said agreement. The State Engineer finds there is no evidence in the file for Application 26376 that any such agreement was ever reached.

## III.

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 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 stock-water permit under Nevada water law.

## CONCLUSIONS

### I.

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

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<sup>2</sup> NRS Chapter 533.

**II.**

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>4</sup>

- 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 Application 26376 was filed for stock-watering purposes and the Applicant does not meet the requirements of NRS § 533.503; therefore, the application is subject to denial.

**IV.**

The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under Application 26376 when the Applicant does not have title to the water right it seeks to change.

**RULING**

Application 26376 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest and the Applicant does not meet the requirements of NRS § 533.503. No ruling is made on the merits of the protest.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 15th day of  
February, 2011.

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<sup>4</sup> NRS § 533.370(5).