

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

IN THE MATTER OF APPLICATION 80632 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE IMLAY AREA )  
HYDROGRAPHIC BASIN (72), PERSHING )  
COUNTY, NEVADA. )

**RULING**  
**#6247**

**GENERAL**

**I.**

Application 80632 was filed on February 28, 2011, by John R. and Jhona Bell to appropriate 0.02 cubic feet per second of underground water for the stockwatering of 400 head of cattle. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 8, T.30N., R.33E., M.D.B.&M. The proposed place of use is described as being located within the NW¼ NE¼ of said Section 8.<sup>1</sup>

**II.**

Application 80632 was timely protested by the United States Department of the Interior, Bureau of Land Management (BLM) on grounds that the point of diversion described under the application is located on land managed by the BLM and the Applicant has not contacted the BLM to obtain permission to complete or maintain the works of diversion or to convey the waters as have been described in the application.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

Nevada Revised Statute § 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 a water right application. The State Engineer finds that in the case of Application 80632, there is sufficient information in the records of the Office of the State Engineer to gain a full understanding of this application and its associated protest without holding a public administrative hearing.

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<sup>1</sup> File No. 80632, official records in the Office of the State Engineer.

## II.

Application 80632 was filed to appropriate underground water from a well-site that is located within the NW¼ NE¼ of Section 8, T.30N., R.33E., M.D.B.&M.<sup>1</sup> The records of the Office of the State Engineer reveal that this point of diversion is identical to the well-site described under Permit 69775 and that it is located on public land administered by the BLM.

Permit 69775 was approved on January 25, 2008, for mining and milling purposes to support Nevada Cement Company's proposed limestone quarry in the nearby Humboldt Range. A well was drilled under Permit 69775; however, this well never progressed beyond the development stage. Nevada Cement Company remains the owner of record of Permit 69775, and has met all the statutory requirements necessary to keep the permit in good standing.

The State Engineer finds that the Applicants have informed the State Engineer that Nevada Cement Company has verbally consented to Applicants' use at this well-site.

## III.

Under the provisions of NRS § 533.503, the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock upon public lands unless the applicant is legally entitled to place livestock upon the public lands for which the permit is sought and the applicant owns or has a legal interest in the cattle.<sup>2</sup> Information relating to federal grazing leases can be obtained through the BLM's Range Administration System website. A recent query of this website by this Office identified the Applicants as the current holder of the Rye Patch federal grazing allotment.<sup>3</sup> Also, the Applicants attested that they are the owners of the cattle intended to be placed on the public lands. The State Engineer finds that the Applicants are the owners of the cattle and are legally entitled to place livestock upon the federal land comprising the place of use under Application 80632.

## IV.

Bureau of Land Management contends that the Applicants have not obtained permission to complete or maintain the works of diversion necessary to support an appropriation of underground water for stock-watering purposes. An answer to this protest issue is found in the permit terms that are included in most stock-water permits issued by the State Engineer, where it is clearly

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<sup>2</sup> NRS § 533.503(1).

<sup>3</sup> BLM Range Administration System, <http://www.blm.gov/ras> last accessed November 18, 2013.

stated that the approval of the permit “does not waive the requirements that the permit holder obtain other permits from State, Federal or local agencies.” The State Engineer finds that if Application 80632 is approved, it would be issued subject to this permit term.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.<sup>4</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>5</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 protectable 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.

Application 80632, if approved, would allow the current range permittee to appropriate underground water for stockwatering purposes upon the federal land. The State Engineer concludes that the Applicant has met the criteria established under NRS § 533.503 and that the approval of Application 80632 would not threaten to prove detrimental to the public interest.

#### IV.

The approval of Application 80632 does not alter Nevada Cement Company’s utilization of its existing well. It would still be entitled to appropriate the full diversion rate and annual duty of water set forth under Permit 69775. As such, the State Engineer concludes that the approval of Application 80632 would not conflict with existing rights.

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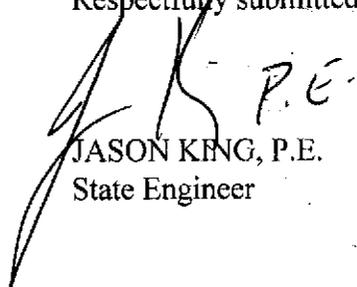
<sup>4</sup> NRS Chapters 533 and 534.

<sup>5</sup> NRS § 533.370(2).

**RULING**

The protest to Application 80632 is hereby overruled and Application 80632 is approved subject to existing rights and the payment of the statutory permit fee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. King P.E.', is written over the typed name and title.

JASON KING, P.E.  
State Engineer

Dated this 17th day of  
December, 2013.