

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

IN THE MATTER OF APPLICATION 79235 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF BLUE SPRING WITHIN THE )  
WHITE RIVER VALLEY HYDROGRAPHIC )  
BASIN (207), WHITE PINE COUNTY, )  
NEVADA. )

**RULING**

**#6262**

**GENERAL**

**I.**

Application 79235 was filed on January 22, 2010, by Blue Diamond Oil Corporation to appropriate 0.0304 cubic feet per second from Blue Spring to water 1,065 sheep and 763 cattle. The proposed point of diversion and place of use is described as being located within the SE¼ SE¼ of Section 2, T.14N., R.62E., M.D.B.&M.<sup>1</sup>

**II.**

Application 79235 was timely protested by Van J. Gardner on grounds that the Applicant does not hold a grazing permit or grazing right on the Forest Service lands where Blue Spring is located and that the Applicant cannot prove beneficial use for stockwater where the Applicant's stock have no right to graze.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

Nevada Revised Statute § 533.365(4) 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 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 is not necessary to consider the merits of the protest.

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<sup>1</sup> File No. 79235, official records in the Office of the State Engineer.

## 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.

## III.

On December 31, 2012, the State Engineer's Office sent a letter to the United States Department of Agriculture Forest Service, Ely Ranger District requesting the identity of anyone who was allowed access to Blue Spring, which parties were permitted range users on allotments that included Blue Spring; and, confirmation that the spring was located on lands administered by the Forest Service. In a response dated April 10, 2013, District Ranger Jose Noriega confirmed that Blue Spring falls entirely within lands administered by the Forest Service, and that Blue Diamond Oil Corporation was not authorized to graze or access the spring.<sup>1</sup>

The State Engineer finds that Blue Diamond Oil Corporation is not legally entitled to place livestock on the lands for which Application 79235 identifies as a point of diversion and place of use, and the protest ground is upheld.

**CONCLUSIONS**

**I.**

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

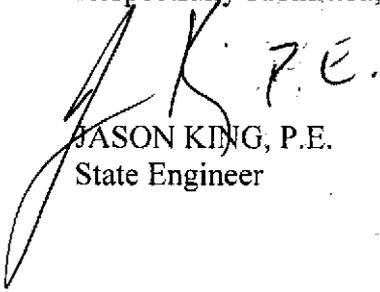
**II.**

Nevada Revised Statute § 533.503 provides that the State Engineer shall not approve a stockwater application seeking to utilize a water source on lands to which the applicant has no legal access. The State Engineer concludes that NRS § 533.503 precludes granting Application 79235, and that if granted, the application would threaten to prove detrimental to the public interest.

**RULING**

Application 79235 is hereby denied on the grounds that to approve an application for stockwater purposes where the Applicant is not the authorized range user would threaten to prove detrimental to the public interest.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 11th day of  
February, 2014.

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<sup>2</sup> NRS chapters 533 and 534.