

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

IN THE MATTER OF APPLICATION 49496, FILED)
TO APPROPRIATE UNDERGROUND WATER IN THE)
CONTINENTAL LAKE VALLEY (02), HUMBOLDT)
COUNTY, NEVADA.)

RULING

4255

GENERAL

I.

Application 49496 was filed on November 4, 1985, by Metropolitan Life Insurance Co. to appropriate 0.031 cubic feet per second (cfs) of water from an underground source for stockwatering of 1,000 head of cattle for use within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, T.45N., R.27E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, T.45N., R.27E., M.D.B.&M.¹

II.

Due to the fact that the status of ownership or right to use land frequently changes, whenever an application to appropriate water for stockwatering on the public land is filed with the Division of Water Resources, the State Engineer sends a letter to the United States Department of Interior, Bureau of Land Management, inquiring as to the right to graze stock on the land identified under the application.

FINDINGS OF FACT

I.

By letters dated November 18, 1985, and September 12, 1986, the State Engineer's Office requested information from the United States Department of Interior, Bureau of Land Management, regarding the current range user/permittee for the place of use described under Application 49496.¹ The State Engineer finds that on February 24, 1987, the State Engineer's Office received a letter from the Bureau of Land Management stating that Alder Creek Ranch, owned by Julian Marcuerquiaga, was the authorized range permittee for the place of use described under Application 49496.¹

¹ File No. 49496, official records in the Office of the State Engineer.

II.

By letter received August 21, 1989, the State Engineer was requested to assign Application 49496 to Julian Marcuerquiaga. By certified mail dated August 29, 1989, the State Engineer's Office informed the Applicant, its agent, and Julian Marcuerquiaga that the deed submitted on August 21, 1989, would not change the owner of record from Metropolitan Life Insurance Co. to Julian Marcuerquiaga. The Applicant was asked to submit within ninety days the correct deed that transferred ownership of Application 49496 to Julian Marcuerquiaga.¹ The return certified mail receipts were received from all addressees on or before September 5, 1989.¹

The applicant, agent and Julian Marcuerquiaga were notified again by certified mail on July 12, 1994, to submit the deed transferring Application 49496 to Julian Marcuerquiaga to the State Engineer's Office.¹ The return receipts were received from all addressees on or before July 18, 1994.¹ The letter assigned a thirty day time limit to furnish the required information. The State Engineer finds that to date the information requested has not been received from the applicant or agent.¹

III.

The authorized range user/permittee within the described place of use for Application 49496 was updated by the Bureau of Land Management on September 26, 1994, at a request from the State Engineer's Office. The State Engineer finds that the current authorized range user for the place of use under Application 49496 is now Manuel Elias.¹

IV.

A long standing policy of the State Engineer limits the approval of private applications for stockwatering rights on public domain and national forest lands to the federal range permittee. The State Engineer finds that the applicant, Metropolitan Life Insurance Company, is not the current range user and permittee.

CONCLUSIONS

I.

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

II.

Beneficial use shall be the basis, the measure and the limit of the right to the use of water.³ The proposed point of diversion and place of use under Application 49496 are located within Alder Creek Allotment, and the authorized range permittee/user is Manuel Elias. The applicant is not the authorized range permittee/user within the Alder Creek Allotment. The State Engineer concludes that the applicant cannot sufficiently demonstrate the ability to place the water to beneficial use for stockwatering purposes.

III.

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

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

The State Engineer concludes it would be detrimental to the public interest to approve this application as the applicant cannot demonstrate the ability to put the water to beneficial use and would further interfere with or impair the value of grazing use of the public lands by the federal range permittee.

² NRS Chapters 533 and 534.

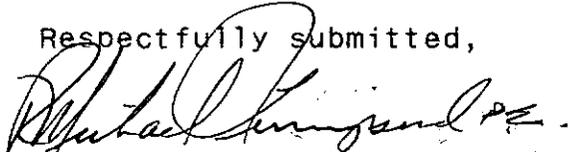
³ NRS 533.035.

⁴ NRS 533.370(3).

RULING

Application 49496 is hereby denied on the grounds that the applicant is not able to demonstrate the ability to place the water to a beneficial use as it is not the range permittee/user. The approval of Application 49496 would be detrimental to the public interest and would interfere with or impair the value of the current range user/permittee's rights on the public lands.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/KJ/ab

Dated this 8th day of
December, 1995.