

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

IN THE MATTER OF APPLICATIONS 66346,)
66347, 66351, 66362, 66363 AND 66364)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE WHITE RIVER)
VALLEY HYDROGRAPHIC BASIN (207),)
WHITE PINE AND NYE COUNTIES,)
NEVADA.)

RULING
5595

GENERAL

I.

Application 66346 was filed on May 10, 2000, by Carter Griffin, Inc., to appropriate 0.0375 cubic feet per second (cfs) of water from Ab Well, an underground source, for stockwatering purposes within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T.11N., R.62E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 2.¹

II.

Application 66347 was filed on May 10, 2000, by Carter Griffin, Inc., to appropriate 0.0375 cfs of water from Albert Well, an underground source, for stockwatering purposes within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.11N., R.62E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15.²

III.

Application 66351 was filed on May 10, 2000, by Carter Griffin, Inc., to appropriate 0.0375 cfs of water from Fera Well, an underground source, for stockwatering purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, T.11N., R.61E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 35.³

¹ File No. 66346, official records in the Office of the State Engineer.

² File No. 66347, official records in the Office of the State Engineer.

³ File No. 66351, official records in the Office of the State Engineer.

IV.

Application 66362 was filed on May 10, 2000, by Carter Griffin, Inc., to appropriate 0.0375 cfs of water from Maybe Well, an underground source, for stockwatering purposes within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.9N., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 15.⁴

V.

Application 66363 was filed on May 10, 2000, by Carter Griffin, Inc., to appropriate 0.0375 cfs of water from A.G. Well, an underground source, for stockwatering purposes within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T.9N., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 29.⁵

VI.

Application 66364 was filed on May 10, 2000, by Carter Griffin, Inc., to appropriate 0.0375 cfs of water from Station Well, an underground source, for stockwatering purposes within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T.9N., R.59E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 36.⁶

VII.

Applications 66346, 66347, 66351, 66362, 66363 and 66364 were timely protested by the U.S.D.I., Bureau of Land Management (BLM) on the grounds that Carter Griffin, Inc. is already a $\frac{1}{2}$ interest co-applicant on senior applications on these wells with the BLM having the other $\frac{1}{2}$ interest. Original applicant, Ab Gubler, sold his $\frac{1}{2}$ interest in these senior applications to Carter Griffin, Inc. when he sold his base property to Carter-Griffin, Inc. Said conveyance has been verified with the State Engineer. The protests reference Applications 47260, 47259, 47261, 47257, 47256 and 47258 as the senior applications noted above.^{1,2,3,4,5,6}

⁴ File No. 66362, official records in the Office of the State Engineer.

⁵ File No. 66363, official records in the Office of the State Engineer.

⁶ File No. 66364, official records in the Office of the State Engineer.

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 an application to appropriate the public waters of the State of Nevada. The State Engineer finds that a hearing is not necessary to consider the merits of the protests filed by the BLM.

II.

Nevada Revised Statute § 533.503 provides that the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless 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.⁷

⁷ NRS § 533.503.

By letter dated November 30, 2000, the BLM informed the Office of the State Engineer that Carter Griffin, Inc. is the authorized range user for the proposed places of use indicated on the pending applications.⁸

The State Engineer finds that the applicant is entitled by the proper federal agency to place livestock upon the public range described under Applications 66346, 66347, 66351, 66362, 66363 and 66364.

III.

The BLM protests state that there are prior pending applications on the proposed points of diversion. The referenced applications are 47260, 47259, 47261, 47257, 47256 and 47258. At the time the protests were filed by the BLM, these file numbers did correspond to pending applications. However, an examination of the records of the Office of the State Engineer show these pending applications have been denied. Further, a determination was made that there are no additional water right permits, proofs or claims filed at the proposed points of diversion.⁹

The State Engineer finds that no other uses of water are permitted at the proposed points of diversion and there are no longer any pending applications at the proposed points of diversion; therefore, there is no conflict with existing rights and the BLM protest issue is moot.

IV.

Applications 66346, 66347, 66351, 66362, 66363 and 66364 request appropriations of water from existing wells within the White River Valley Hydrographic Basin sufficient to water 1,200 head of cattle. The estimated perennial yield of the White River Valley Hydrographic Basin has been established as 37,000 acre-feet annually.¹⁰ A review of records in the Office of the State Engineer show the estimated committed groundwater resources, for the White River Valley Hydrographic Basin, total less than 32,000 acre-feet annually.¹¹

⁸ See, BLM letter, November 30, 2000, File No. 66344, official records in the Office of the State Engineer.

⁹ Water Rights Township Plats, Township 11 North, Range 62 East; Township 11 North, Range 61 East; Township 9 North, Range 60 East; Township 9 North Range 59 East, M.D.B.&M., official records in the Office of the State Engineer.

¹⁰ Nowlin, Jon, Ground-Water Quality in Nevada – a Proposed Monitoring System, USGS Open-File Report 78-768, United States Department of the Interior Geological Survey, p. 201.

¹¹ Nevada Division of Water Resource's Water Rights Database, Hydrographic Basin Summary for White River Valley, December 28, 2004.

The State Engineer finds that permits and certificates have been issued under existing rights for less than the estimated perennial yield from the groundwater system within the White River Valley Hydrographic Basin. The State Engineer finds there is unappropriated water at the proposed source in sufficient quantity to satisfy the requested appropriations.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹²

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹³

- 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 stockwatering is a beneficial use and the applicant is the current range user of the federal grazing allotment; therefore, the approval of Applications 66346, 66347, 66351, 66362, 66363 and 66364 would not threaten to prove detrimental to the public interest.

IV.

The State Engineer concludes there is unappropriated water at the proposed source and the proposed uses will not conflict with existing rights.

V.

With the denial of Applications 47256, 47257, 47258, 47259, 47260, and 47261, the State Engineer concludes that the protest claims of the BLM have been rendered moot.

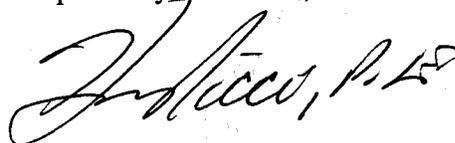
¹² NRS chapters 533 and 534.

¹³ NRS § 533.370 (4).

RULING

The protests to Applications 66346, 66347, 66351, 66362, 66363 and 66364 are hereby overruled and said applications are approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 14th day of
March, 2006.