

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

IN THE MATTER OF APPLICATION 46157)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE MARYS RIVER AREA)
HYDROGRAPHIC BASIN (42), ELKO)
COUNTY, NEVADA.)

RULING

5834

GENERAL

I.

Application 46157 was filed on September 15, 1982, by Dahl, Inc., to appropriate 0.025 cubic feet per second of water from Clairs Well for stockwatering purposes within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T.39N., R.60E., M.D.B.&M., and Lots 1, 2, SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T.39N., R.61E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T.39N., R.60E., M.D.B.&M.¹

FINDINGS OF FACT

I.

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

¹ File No. 46157, official records in the Office of the State Engineer.

- 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 BLM informed the State Engineer on December 20, 2006, that Application 46157 is within the Mud Springs Allotment and the current permittee is William C. and Jean M. Spratling.¹ The State Engineer finds that the Applicant, Dahl Inc., is not legally entitled to place livestock upon the lands compromising the point of diversion and place of use under Application 46157. The State Engineer finds to approve a permit for stockwatering when the applicant is not authorized to use the public lands for grazing would threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³

- 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 the Applicant is not the current range user for the allotment containing the water source; therefore, the approval of Application 46157 would threaten to prove detrimental to the public interest.

² NRS chapter 533 and 534.

³ NRS § 533.370 (5).

RULING

Application 46157 is hereby denied on the grounds that to approve an application for stockwatering purposes where the applicant is not the authorized range user would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 11th day of

April, 2008.