

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

IN THE MATTER OF APPLICATIONS 77141,)
77142, 77143, AND 77664 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
FROM VARIOUS SURFACE SOURCES)
WITHIN THE PINE FOREST)
HYDROGRAPHIC BASIN (29) HUMBOLDT)
COUNTY, NEVADA.)

RULING
6029

GENERAL

I.

Application 77141 was filed on June 16, 2008, by Julian W. Marcuerquiaga to appropriate 1.337 cubic feet per second (cfs) of water from Granite Creek for irrigation purposes. The proposed place of use is described as being located within portions of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 23, T.45N., R.30E., 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 23.¹

II.

Application 77142 was filed on June 16, 2008, by Julian W. Marcuerquiaga to appropriate 0.334 cfs of water from Rattlesnake Creek for irrigation purposes. The proposed place of use is described as being located within portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23 and a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T.45N., R.30E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, T.45N., R.30E., M.D.B.&M.²

III.

Application 77143 was filed on June 16, 2008, by Julian W. Marcuerquiaga to appropriate 1.114 cfs of water from Alta Creek for irrigation purposes. The proposed place of use is described as being located within portions of the N $\frac{1}{2}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.45N., R.30E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 24.³

¹ File No. 77141, official records in the Office of the State Engineer.

² File No. 77142, official records in the Office of the State Engineer.

³ File No. 77143, official records in the Office of the State Engineer.

IV.

Application 77664 was filed on December 8, 2008, by Alder Creek Denio Ranch, LLC, to appropriate 0.0078 cfs of water from Rattlesnake Spring and Creek for stock watering purposes. The proposed place of use is described as being located within portions of Section 24 and all of Sections 25 and 36, T.45N., R.30E., portions of Sections 19, 20, 29, and 32, and all of Sections 30 and 31, T.45N., R.31E., all of Sections 1, 12, and 13 T.44N., R.30E., and portions of Section 7, 8 and 18 and all of Sections 5 and 6, T.44N., R.31E. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 26, T.45N., R.30E., M.D.B.&M.⁴

V.

Applications 77141, 77142, and 77143 were timely protested by Robert R. Squires, on behalf of Alder Creek Denio Ranch, LLC, on the grounds that:¹⁻³

The granting of this water right application will negatively [*sic*] impact downstream range and water rights of Alder Creek Denio Ranch. There is insufficient water for existing and new water rights from this source.

VI.

Application 77664 was timely protested by John H. Milton, III, on behalf of SSD Ranch, LLC, successor in interest to Julian W. Marcuerquiaga on the grounds that:

The granting of Application 77664 would impair the existing water rights (Proofs 05854 and 05855 and Application 77142). At the current time the protestants believe that there is no more water available to serve Application 77142 [*sic*].^{4,5}

FINDINGS OF FACT

I.

An informal field investigation¹ was conducted on October 29, 2008, near the Quinn River Maintenance Station to resolve the protests to Applications 77141, 77142, and 77143. Attendees were Robert R. Squires and Kent Pascoe (representing Alder Creek Denio Ranch, LLC), Buster Dufferrena (representing Quinn River Crossing Ranch, LLC), and John H. Milton, III (representing Julian W. Marcuerquiaga). Also attending were Steve Del Soldato and Sam Monteleone (representing the Office of the State Engineer). The outcome of the meeting was that Quinn River Crossing Ranch, LLC, and Alder Creek Denio Ranch, LLC, would file stock water applications on Rattlesnake Spring. Both ranches currently are utilizing water from the

⁴ File No. 77664, official records in the Office of the State Engineer.

⁵ The Protestant mistakenly identified the application number, the correct number is 77664.

spring. Subsequently, Applicant Marcuerquiaga would protest both Applications. Then all parties would meet and harmoniously reach an agreement among themselves and resolve their protests. During the ensuing fifteen months since the meeting, only Alder Creek Denio Ranch, LLC, has filed the requested stock water application. This Application 77664 was timely protested as agreed upon. The State Engineer finds that 15 months is adequate time for the situation to be resolved.

II.

On September 29, 2008, Mr. Del Soldato measured the flows of Alta Creek, Granite, and Rattlesnake Creek. The results are summarized below:¹

Application	Diversion Requested	Use	Source	Diversion Measured
77141	1.337 cfs	Irrigation	Granite Creek	0.662 cfs
77142	0.334 cfs	Irrigation	Rattlesnake Creek	0.131 cfs
77143	1.114 cfs	Irrigation	Alta Creek	0.729 cfs

There was no flow measurement made on Rattlesnake Spring. During the meeting Mr. Dufferrena said that a spring box was installed at Rattlesnake Spring and two diversions had been made for more than 40 years for the benefit of Quinn River Crossing Ranch, LLC, and Alder Creek Denio Ranch, LLC. A search of the records in the Office of the State Engineer before the meeting did not discover any valid water rights to allow these two diversions. However, there are two Claims of Vested Rights; one on Rattlesnake Creek (V05855)⁶ and a second on Rattlesnake Spring (V05854).⁷ These claims are in the name of Julian W. and Edith M. Marcuerquiaga, 1980 Living Trust. Each claim requested 0.22 cfs for stock watering purposes for the watering of 3,250 head of cattle and 30 horses (1892). The State Engineer finds that from flow measurements and existing rights a determination can be made as to water availability at the proposed sources.

III.

Application 77141 requests 1.337 cfs from Granite Creek. The State Engineer finds there are no existing, valid water rights on file in the State Engineer's office on this source; therefore, approval of the application would not affect downstream users. The stream measurement made on September 28, 2008, indicates a flow of 0.662 cfs. The State Engineer finds Application 77141 can be approved for 0.662 cfs for the irrigation of 60 acres.

⁶ Claim of Vested Right V05855, official records in the Office of the State Engineer.

⁷ Claim of Vested Right V05854, official records in the Office of the State Engineer.

IV.

Application 77142 requests 0.334 cfs from Rattlesnake Creek. The State Engineer finds there is one claim of vested right (V05855) on file in the State Engineer's office on this source for 0.22 cfs. Nine other claims of vested rights were filed for the same 3,280 stock animals. If the claims were to be adjudicated, each claim would be assigned 0.022 cfs. The stream measurement made on September 28, 2008, indicates a flow of 0.131cfs. This would leave 0.11 cfs for new appropriation. Therefore, the State Engineer finds Application 77142 can be approved for 0.11 cfs for the irrigation of 15 acres, subject to existing rights.

V.

Application 77143 requests 1.114 cfs from Alta Creek. The State Engineer finds Claim of Vested Right V01243 on file in the State Engineer's office for the irrigation of five acres from Alta Creek.⁸ There are no other existing, valid water rights on Alta Creek downstream of the points of diversion of V01243 and Application 77143. The stream measurement made on September 28, 2008, indicates a flow of 0.729 cfs. Therefore, the State Engineer finds Application 77143 can be approved for 0.729 cfs for the irrigation of 50 acres, subject to existing rights.

VI.

Application 77664 requests 0.0078 cfs for watering 250 head of cattle from Rattlesnake Spring. The State Engineer finds Claim of Vested Right V05854 is a claim of vested right on file in the State Engineer's office for stock water purposes.⁹ Water has been diverted from a spring box located at Rattlesnake Spring for many years.⁶ This stock water application was submitted by Alder Creek Denio Ranch, LLC, at the request of the Division of Water Resources to make the diversion legal. Claim of Vested Right V05854 requested 0.22 cfs for the watering of 3,280 stock animals. As stated above, if the right was to be adjudicated it would be assigned a diversion rate of 0.022 cfs. Therefore, the State Engineer finds Application 77664 can be approved for 0.0078 cfs for stock watering, subject to existing rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁹

⁸ Claim of Vested Right V01243, official records in the Office of the State Engineer.

⁹ NRS Chapter 533.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁰

- 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.

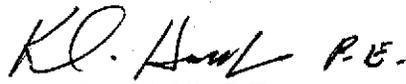
III.

The State Engineer concludes the approval of Applications 77141, 77142, 77143, and 77664 would not threaten to prove detrimental to the public interest or conflict with existing rights. The State Engineer concludes there is unappropriated water at the proposed sources in the amounts noted in the Findings.

RULING

The protests are overruled and Applications 77141, 77142, 77143, and 77664 are hereby approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,

for  P.E.
TRACY TAYLOR, P.E.
State Engineer

Dated this 8th day of
March, 2010.

¹⁰ NRS § 533.370(5).