

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

IN THE MATTER OF APPLICATION)
83025 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF LITTLE JOE)
SPRING WITHIN THE HUNTINGTON)
VALLEY HYDROGRAPHIC BASIN (47),)
WHITE PINE COUNTY, NEVADA.)

RULING
#6336

GENERAL

I.

Application 83025 was filed on August 14, 2013, by The Little Paris Sheep Company, LLC, to appropriate 0.0188 cubic feet per second (cfs) of the waters of Little Joe Spring for stockwater purposes for 3,000 sheep from January 1st through December 31st of each year. The proposed point of diversion is described as being located within the SE¼ NE¼ of Section 30, T.25N., R.55E., M.D.B.&M. The proposed place of use is described as being located within the SE¼ NE¼ of Section 30 and the NW¼ NE¼ of Section 28, all within T.25N., R.55E., M.D.B.&M.¹

II.

Application 83025 was timely protested by Pete and Julian Goicoechea (Goicoechea) on the following grounds:¹

This water is located in a common allotment that has been grazed by Pete and Julian Goicoechea since 1978. This water will have a vested claim brought forward by Pete and Julian Goicoechea once the process of adjudication of surface waters of this basin is initiated. The granting of a water right exclusively for sheep use would be inconsistent with historical, current, and future uses of this water.

III.

A response to the protest was served on the Protestant and was timely received in the Office of the State Engineer.¹

¹ File No. 83025, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Nevada Revised Statutes § 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 sufficient evidence is available in the records of the Office of the State Engineer to evaluate the merits of Applications 83025 and its associated protest and an administrative hearing is not necessary.

II.

Before an application to appropriate water from a surface water source can be considered for approval, it must be determined that there is sufficient unappropriated water available at the source and that the proposed appropriation will not conflict with existing water rights. One of the initial steps in making this determination is to identify all active water rights on file in the Office of the State Engineer in regard to the source in question. The Office of the State Engineer has created and maintains a searchable water rights database to allow searches of existing water rights.

In reviewing active water rights on the source, the State Engineer found that Reserved Claim R-09398 was filed by the Bureau of Land Management on July 25, 2003, to appropriate water from Little Joe Spring for stockwater and wildlife. The claim states that the reserved right and other water rights for livestock grazing common to this same grazing allotment should be limited to the quantity of water beneficially used within the allotment and that wildlife currently utilizes this spring; therefore, sufficient water should be left at the source for this purpose and not be available for appropriation.² Reserved Claim R-09398 is an implied federal reserved right known as a PWR 107. On April 17, 1926, President Calvin Coolidge created Public Water Reserve (PWR) 107 by executive order. The executive order allowed for the withdrawal from settlement, public lands of every smallest legal subdivision of the public land surveys which was vacant unappropriated unreserved public land that contained a spring or water hole, and all land within one quarter of a mile of every spring or water hole located on unsurveyed

² File No. R-09398, official records in the Office of the State Engineer.

public land.³ The history of, and criteria for determining a PWR 107 claim has been extensively discussed in prior State Engineer Rulings.⁴

The State Engineer finds the validity and extent of any reserved rights may be determined after a general adjudication of all water rights, when such proofs of claims are adjudicated. If the PWR 107 claim is determined to be valid, it shall be recognized and any permit granted under this application would be issued subject to reserved rights. However, the State Engineer finds here that wildlife is not a valid PWR purpose. Similarly, the protest filed by Goicoechea states that a vested claim will be brought forward by Goicoechea once the process of adjudication of surface waters of this basin is initiated. The State Engineer found that a search of the records of the Office of the State Engineer failed to locate any active water rights owned by Goicoechea on file under the source considered here. If Goicoechea files a vested right determined to be valid, any permit issued under this application would be subject to, and junior to that existing right.

The State Engineer finds that there is only one unadjudicated reserved right on this source, filed by BLM. Thus, the State Engineer finds that there is unappropriated water at the source and any permit would be subject to existing rights.

III.

Application 83025 was protested by Goicoechea on grounds that this water is located in a common allotment that has been grazed by Goicoechea since 1978.

Nevada Revised Statute § 533.503(1) provides that 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

³ See *Great Basin Resource Watch v. U.S. Dept. of Interior*, 2014, WL 3696661 (Slip Copy) (D. Nev. 2014) (citing *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 966 (9th Cir. 2006)).

⁴ See generally, e.g., Ruling Nos. 3219 and 5729, official records in the Office of the State Engineer.

- (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 State Engineer finds that the Applicant submitted evidence supporting the application that meets the requirement of NRS § 533.403(1), including an *Affidavit in Support of Stockwater Application*, demonstrating that it owns the livestock to be placed upon the public range described under Application 83025. In addition, the Bureau of Land Management (BLM), Egan Field Office, confirmed that Little Paris Sheep Company, LLC is the authorized Grazing Permittee for this area, which is within the Railroad Pass Allotment (0601). The point of diversion and place of use of Application 83025 are located within the Railroad Pass Allotment (0601) and in the Corta Seeding Pasture. The term of this Grazing Permit began on November 8, 2011, and ends on November 7, 2021. The State Engineer finds that The Little Paris Sheep Company, LLC is an authorized range user upon the Railroad Pass Allotment (0601) through the BLM. The final protest issue by Goicoechea concerns the granting of a water right exclusively for sheep use, which argues that it would be inconsistent with historical, current, and future uses of this water. The State Engineer finds that granting water rights for stockwater purposes is consistent with historical, current and future water rights.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting a permit under an application that requests to appropriate the public waters where:⁶

- 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 protectable 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.

⁵ NRS Chapter 533.

⁶ NRS § 533.370(2).

III.

The Little Paris Sheep Company, LLC is the authorized BLM range user within the Railroad Pass Allotment (0601) and the point of diversion and place of use under Application 83025 are located within the Railroad Pass Allotment (0601); therefore, the State Engineer concludes the criteria of NRS § 533.503 are met.

IV.

The State Engineer concludes that stockwater use is defined as a beneficial use under Nevada water law, and a stockwater permit includes the right to water sheep.⁷

V.

The State Engineer concludes that any approval of Application 83025 would be subject to existing rights, and thus Application 83025 does not conflict with existing rights.

RULING

The protest to Application 83025 is overruled and the application is hereby approved, subject to existing rights and the payment of statutory permit fees.

Respectfully submitted,


P.E.
JASON KING, P.E.
State Engineer

Dated this 27th day of
January, 2016.

⁷ See NRS § 533.490(1).