

IN THE MATTER OF APPLICATION 38480 FILED)
BY DAVID AND CAROLE CARTER FOR PERMISSION)
TO APPROPRIATE 0.10 C.F.S. OF WATER FROM)
EGAN CREEK FOR STOCKWATERING PURPOSES IN)
WHITE PINE COUNTY, NEVADA)

R U L I N G

INTRODUCTION

I

Application 38480 was filed to appropriate water from Egan Creek for stockwatering purposes in Steptoe Valley, White Pine County, Nevada.

FINDINGS OF FACT

I

Application 38480 was filed by David and Carole Carter on July 2, 1979, for permission to appropriate 0.10 c.f.s., of water from Egan Creek in White Pine County, Nevada, for stockwater and domestic purposes. The point of diversion is located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 13, T.23N., R.62E., M.D.B.&M. The place of use is within the same subdivision as the point of diversion. It is proposed to use the water to water 1,000 head of cattle. According to the application, it is proposed to reconstruct an existing dam and ditches.

II

Application 38480 was timely protested by the United States of America, Bureau of Land Management, on June 5, 1980, on the following grounds:

- "1. Brook trout and Rainbow trout are present in this area and any diversion may have an adverse impact on these fish species.
- "2. There are also an unknown number of deer, birds, small mammals, amphibian and reptiles that use this creek for water and any diversion of water would have an adverse impact.
- "3. The endangered bald Eagle and Peregrine Falcon can be found in this area at various times and could be adversely affected."

III

The following summarizes existing rights of record for the appropriation of water from Egan Creek and its Tributaries:

Certificate of Appropriation No. 354 was issued under Proof of Appropriation 01136 in the Matter of the Determination of the Relative Rights of Claimants and Appropriators in and to the Waters of Egan Creek and its Tributaries in White Pine County, Case No. 6715, final decree entered November 30, 1956. Certificate 354 was issued for the appropriation of 1.257 c.f.s., of water from Egan Creek and its Tributaries for the irrigation of 76.0 acres of land located in portions of the E $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18, N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 19; and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20, all located within T.23N., R.63E., M.D.B. & M. The owner of record is K. A. Barton.

Egan Creek is also the subject of pending Applications 38477, 38478, and 38479.

Application 38477 was filed on July 2, 1979, by Carole and David Carter for permission to appropriate 2.6 c.f.s., of water from Egan Creek from a point within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 15, T.23N., R.62E., M.D.B. & M., for the irrigation of 160 acres of land located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14; E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 15; and NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 22, all in T.23N., R.62E., M.D.B. & M.

Application 38478 was filed on July 2, 1979 by Carole and David Carter for permission to appropriate 0.10 c.f.s., of water from Egan Creek from a point within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 15, T.23N., R.62E., M.D.B. & M., for stockwatering and domestic purposes, (1000 head of cattle). The place of use is within the same subdivision as the point of diversion. The points of diversion under this application and Application 38477 are identical.

Application 38479 was filed on July 2, 1979, by Carole and David Carter for permission to appropriate 5.4 c.f.s., of water from Egan Creek from a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 13, T.23N., R.62E., M.D.B. & M., for the irrigation of 320 acres of land located within the N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 18; N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 19; and NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20, all in T.23N., R.63E., M.D.B. & M. The point of diversion described under Application 38479 is identical to that described under Application 38480.

CONCLUSIONS

I

The State Engineer is required by statute to approve any application where there is unappropriated water in the source; where the proposed appropriation will not interfere with existing rights; and where the proposed appropriation is not detrimental to the public interest. There is unappropriated water in the source, since the decree in the Determination of the Relative Rights of the Claimants and Appropriators in Egan Creek and its Tributaries did not state that the Egan Creek stream system is fully appropriated.

II

The proposed appropriation under Application 38480 does not interfere with existing rights, since the applicants are the sole users of the waters of Egan Creek and its Tributaries.

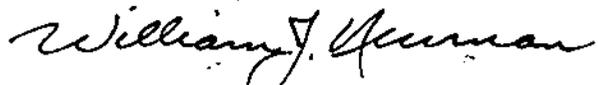
III

The proposed action by the applicants is not detrimental to the public interest. The protest of the Bureau of Land Management asserts damage to the fishery and wildlife, but does not offer substantiation. In addition, it is to be noted that no protest was filed against Application 38479 which proposes a substantially larger diversion from the same source described under Application 38480.

RULING

The protest to Application 38480 is overruled and a permit will be issued upon payment of the statutorily required permit fees.

Respectfully submitted,



William J. Newman
State Engineer

WJN/bc

Dated this 13th day of
August, 1980.