

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

IN THE MATTER OF APPLICATIONS 47396)
AND 47397 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF THE STATE OF)
NEVADA FROM SPRINGS WITHIN THE)
DIAMOND VALLEY HYDROGRAPHIC BASIN)
(153), EUREKA COUNTY, NEVADA.)

RULING

4747

GENERAL

I.

Application 47396 was filed on November 7, 1983, by Julian and Pete Goicoechea to appropriate 0.02 cubic feet per second (cfs) of water from Spring #1 for stockwatering of 500 head of cattle and 20 head of horses within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T.26N., R.54E., M.B.D.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 25.¹

II.

Application 47397 was filed on November 7, 1983, by Julian and Pete Goicoechea to appropriate 0.02 cfs of water from Spring #2 for stockwatering of 500 head of cattle and 20 head of horses within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T.26N., R.54E., M.B.D.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 24.²

III.

The subject applications were timely protested by the United States Bureau of Land Management (BLM) and Pete Paris, Jr., d.b.a. Paris Livestock.

¹ File No. 47396, official records in the office of the State Engineer.

² File No. 47397, official records in the office of the State Engineer.

The BLM protested the applications on the grounds that the springs are reserved under Executive Order No. 107 as a public water reserve and are not available for appropriation.

Paris Livestock protested the applications on the grounds that the springs are located on a private BLM allotment and that Paris Livestock is the sole permittee for said allotment.

FINDINGS OF FACT

I.

By letter dated December 7, 1983, the State Engineer's office requested information from the BLM regarding the permittees or current range users within the place of use described under Applications 47396 and 47397. On January 10, 1984, the State Engineer's office received a letter from the BLM stating that the range users are Julian and Pete Goicoechea and Paris Livestock.^{1,2}

On May 11, 1999, the State Engineer requested an update on range users within the place of use described under Applications 47396 and 47397. On May 21, 1999, the State Engineer's office received a letter from the BLM Battle Mountain Office stating that Applications 47396 and 47397 are in the Corta Allotment and that Pete Paris of Paris Livestock is the only permittee.

Nevada Water Law provides that the State Engineer shall not issue a permit unless the applicant for the permit is legally entitled to place the livestock on the public lands for which the permit is sought.⁴

⁴ NRS § 533.503 1(a).

The State Engineer finds that the applicant is not legally entitled to place livestock on the public lands for which the permit is sought.

CONCLUSIONS

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 to appropriate the public waters where:⁶

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

Under the provisions of NRS § 533.503 the State Engineer can not approve applications filed to appropriate water for stockwatering purposes upon federal land unless the applicant is the current federal range permittee. Information supplied by the proper federal regulatory agency indicates that Julian and Pete Goicoechea are no longer permitted to graze livestock upon the lands described within the place of use of the subject

⁵ NRS Chapter 533.

⁶ NRS § 533.370.

applications. The State Engineer concludes that it would not be in the public interest to approve applications to appropriate water for stockwatering purposes upon federal lands to an applicant who is not the current federal range user.

RULING

Applications 47396 and 47397 are hereby denied on the grounds that to approve an application for stockwatering purposes on a source where the applicant cannot demonstrate the ability to place the water to beneficial use would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJB/cl

Dated this 14th day of
July, 1999.