

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

IN THE MATTER OF APPLICATIONS)
47256, 47257, AND 47258 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE)
WITHIN THE WHITE RIVER VALLEY,)
HYDROGRAPHIC BASIN (207), NYE)
COUNTY, NEVADA.)

RULING

5564

GENERAL

I.

Application 47256 was filed on September 20, 1983, by Albert Gubler / U.S. Government BLM (BLM), to appropriate 0.01 cubic feet per second (cfs) of water from A.G. Well, an underground source, for stockwater and wildlife purposes within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T.9N., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 29.¹

II.

Application 47257 was filed on September 20, 1983, by Albert Gubler / U.S. Government BLM (BLM), to appropriate 0.01 cfs of water from Maybe Well, an underground source, for stockwater and wildlife purposes within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.9N., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 15.²

III.

Application 47258 was filed on September 20, 1983, by Albert Gubler / U.S. Government BLM (BLM), to appropriate 0.01 cfs of water from Station Well, an underground source, for stockwater and wildlife purposes within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T.9N., R.59E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 36.³

¹ File No. 47256, official records in the Office of the State Engineer.

² File No. 47257, official records in the Office of the State Engineer.

³ File No. 47258, official records in the Office of the State Engineer.

IV.

Applications 47256, 47257 and 47258 were timely protested on grounds that will not be considered in this ruling.^{1,2,3}

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.365 (3) 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 an administrative hearing is not necessary.

II.

A review of records in the Office of the State Engineer show the owners of record for Applications 47256, 47257 and 47258 are Albert Gubler and the BLM as co-applicants with an undivided ½ interest each. It is general knowledge that Albert Gubler is deceased. Also, the apparent successor to Mr. Gubler appears to be Carter Griffin, Inc., based on information contained in the application file.⁴ However, ownership can only be transferred through the proper filing of a Report of Conveyance with the Office of the State Engineer. The State Engineer shall not consider or treat the person to whom an application is conveyed as the owner or holder of the application until a Report of Conveyance is confirmed.⁵ To date, a Report of Conveyance has not been filed for Applications 47256, 47257 and 47258.⁶

The State Engineer finds that Albert Gubler must be treated as the owner of record of an undivided ½ interest in Applications 47256, 47257 and 47258 in accordance with Nevada water law.

III.

Information on file in the Office of the State Engineer indicates that Albert Gubler sold his grazing rights to the places of use specified in the applications to Carter Griffin,

⁴ See, document dated February 28, 1996, File No. 47256, official records in the Office of the State Engineer.

⁵ NRS § 533.386 (4).

⁶ Records search for filed Reports of Conveyances within File Nos. 47256, 47257 and 47258 and within the Titles Database, January 27, 2005, official records in the Office of the State Engineer.

Inc.⁷ In 1996, Carter Griffin, Inc., submitted a document to change the ownership of the applications from Albert Gubler to Carter Griffin, Inc. The document was rejected and returned to Carter Griffin, Inc., with a letter from the State Engineer's office explaining the proper procedure for transferring title. Subsequently, Carter Griffin, Inc. filed new applications to appropriate water for stockwater purposes with points of diversion identical to Applications 47256, 47257 and 47258. By certified letter dated December 13, 2000, the interested parties were informed of the current circumstances and were given two options for correcting the deficiencies in Applications 47256, 47257 and 47258. The first option, in part, involved withdrawal by the current co-applicant, Albert Gubler, or updating ownership to the name of Carter Griffin, Inc. The second option was to have the BLM withdraw the stockwater portion of the applications. The applicants were warned that failure to reply might result in denial of the applications. The BLM responded in writing and indicated that it did not wish to withdraw its portion of the applications.^{1,2,3} Steve Carter, on behalf of Carter Griffin, Inc., responded by telephone and indicated that he possessed a deed that would transfer the Albert Gubler portion of the applications but preferred to take no action at this time.¹

Over four years have passed since the last correspondence from any of the parties involved in the applications. To date, the parties have not acted on any of the options outlined in the December 13, 2000, certified letter.^{1,2,3}

The State Engineer finds that the applicants were properly notified and have had sufficient time to correct the deficiencies in Applications 47256, 47257 and 47258 and have chosen to take no action. The State Engineer finds that it would threaten to prove detrimental to the public interest to continue withholding action on Applications 47256, 47257 and 47258 when there are applications later in time filed on the same points of diversion that are awaiting action.

IV.

In 2003, the Nevada Legislature amended NRS § 533.503 to provide, in part, 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 livestock on the lands for which the permit is sought and:

⁷ See, letter from BLM dated November 30, 2000, stating that Carter Griffin, Inc. is the current authorized range user, File No. 66344, official records in the Office of the State Engineer.

- (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
- (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 the BLM does not own, lease or otherwise possess a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought and is therefore not qualified to obtain a stockwater permit under Nevada water law. The State Engineer finds that Albert Gubler is not the current range user or permittee at the proposed places of use described by Applications 47256, 47257 and 47258⁷ and is therefore not qualified to obtain a stockwater permit under Nevada water law.

V.

Applications 47256, 47257 and 47258 were filed for stockwater and wildlife purposes. Although a water right application may only be filed for one purpose,⁸ it is not uncommon for an applicant to note wildlife use on a stockwater application. Absent of any physical restrictions, wildlife will water at various water sources within their range independent of ownership or the stated beneficial use of a water right. If water is available, the wildlife may or may not choose to water at a particular source and the use may be consistent or sporadic depending on numerous environmental factors. In the case of an underground source of water being pumped to the surface for use by livestock, the water is simultaneously available for various wildlife. If water is needed at these particular points of diversion for wildlife, at times when water is not being diverted for livestock, a separate application may be filed for wildlife purposes.

⁸ NRS 533.330.

The State Engineer finds that the applications before him request an appropriation of underground water for stockwater purposes, as the one purpose allowed under NRS 533.330, and that any need for an appropriation of additional water from these well sites for wildlife purposes can be requested through the submittal of water right applications for such purpose.

VI.

Applications 47256, 47257, and 47258 were filed jointly between a private individual and the BLM as co-applicants with an undivided $\frac{1}{2}$ interest each. The State Engineer finds that when an application is filed jointly for the primary purpose of stockwatering, all parties on the joint application must meet the provisions of NRS § 533.503. The State Engineer has found in this ruling that neither of the co-applicants is qualified to obtain a stockwater permit. Therefore, the State Engineer finds that joint Applications 47256, 47257, and 47258 cannot be approved.

CONCLUSIONS

I.

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

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 threatens to prove detrimental to the public interest.

III.

The State Engineer concludes Applications 47256, 47257 and 47258 were filed for the primary purpose of stockwatering.

⁹ NRS chapters 533 and 534.

¹⁰ NRS § 533.370 (4).

IV.

The State Engineer concludes that the original applicants are the current owners of record in the Office of the State Engineer.

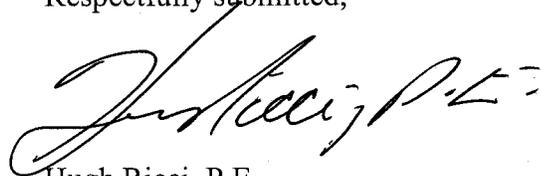
V.

The State Engineer concludes that the applicants do not meet the requirements of NRS §533.503; therefore, the applications are subject to denial.

RULING

Applications 47256, 47257 and 47258 are hereby denied under the provisions of NRS § 533.503. No ruling is made on the merits of the protests.

Respectfully submitted,



Hugh Ricci, P.E.
State Engineer

HR/TW/jm

Dated this 9th day of

February, 2006.