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

IN THE MATTER OF APPLICATIONS 83023 AND 83024 FILED TO APPROPRIATE THE PUBLIC WATERS OF RAILROAD PASS SPRING NOS. 1 AND 2 WITHIN THE DIAMOND VALLEY HYDROGRAPHIC BASIN (153), EUREKA COUNTY, NEVADA.	)	**RULING** **#6306**

GENERAL

I.

Application 83023 was filed on August 14, 2013, by The Little Paris Sheep Company, LLC to appropriate 0.0125 cubic feet per second (cfs) of the waters of Railroad Pass Spring No. 2 for stockwater purposes from January 1 through December 31 of each year. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 25, T.26N., R.54E., M.D.B.&M. The proposed place of use is described as being located within the SE¼ SW¼ and SW¼ SE¼ of Section 24 and the NE¼ NW¼ and NW¼ NE¼ of Section 25, all in T.26N., R.54E., M.D.B.&M.[1]

II.

Application 83024 was filed on August 14, 2013, by The Little Paris Sheep Company, LLC to appropriate 0.0125 cfs of the waters of Railroad Pass Spring No. 1 for stockwater purposes from January 1 through December 31 of each year. The proposed point of diversion is described as being located within the SE¼ SW¼ of Section 24, T.26N., R.54E., M.D.B.&M. The proposed place of use is described as being located within the SE¼ SW¼ and SW¼ SE¼ of Section 24 and the NE¼ NW¼ and NW¼ NE¼ of Section 25, all in T.26N., R.54E., M.D.B.&M.[2]

III.

Applications 83023 and 83024 were timely protested by Pete and Julian Goicoechea on the following grounds: [1,2]

> 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

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[1] File No. 83023, official records in the Office of the State Engineer.
[2] File No. 83024, official records in the Office of the State Engineer.

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.

IV.

Applications 83023 and 83024 were timely protested by Eureka County on the following grounds:[1,2]

1. Eureka County asserts that virtually every surface water source-spring, seep, or stream-within the Diamond Valley Hydrographic Basin 153 has an associated undetermined vested water right. This would include the springs at issue under Applications 83023 and 83024. Therefore, there is no water available for appropriation at the proposed source of supply, the proposed use conflicts with or will impair and interfere with existing rights and threatens to prove detrimental to the public interest.

2. Eureka County supports ranching and livestock grazing. This protest does not challenge the need to provide stockwater to support the permit to graze sheep. This protest is meant to ensure that any additional new water appropriations on the springs at issue under Applications 83023 and 83024 do not conflict with existing rights.

3. The State Engineer should not even consider Applications 83023 and 83024 until the effort has been made to document and determine existing vested rights on the proposed source of supply. Subsequently, any consideration of Applications 83023 and 83024 must ensure that conflicts with existing rights will not occur.

V.

A response to the protests was served on the Protestants and was timely received in the Office of the State Engineer.[1,2]

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 83023 and 83024 and their associated protests and a 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 regards to the source springs in question. The Office of the State Engineer has created and maintains a searchable water rights database to allow research of existing water rights. A review of this database failed to identify any existing water rights on file in the Office of the State Engineer on the sources considered here.

In performing further review of inactive water rights, the State Engineer found that Applications to Appropriate 47396 and 47397 were filed on November 7, 1983, to appropriate water from Spring No. 1 and Spring No. 2. An examination of Applications 47396 and 47397 reveals that the listed bearings and ties reasonably describe Railroad Pass Spring Nos. 1 and 2 as described under Applications 83023 and 83024.

The State Engineer finds Applications 47396 and 47397 were denied on July 14, 1999, by State Engineer's Ruling No. 4747 on grounds that the applicant, who was not the current federal range permitee, could not demonstrate the ability to place the water to beneficial use and would threaten to prove detrimental to the public interest.

III.

On September 23, 2014, a field investigation[3] was conducted at the described points of diversion of Applications 83023 and 83024. The point of diversion for Application 83023 revealed an iron pipe protruding from the hillside and water was observed to be flowing at approximately ½ gallon per minute (gpm). There was no recent evidence of cattle grazing. Due to the condition of the works of diversion, lack of storage troughs and a lack of stock use, the site surrounding the point of diversion for Application 83023 does not appear to have been improved or maintained for some time. The area surrounding the point of diversion had moderate to heavy vegetation present.

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[3] Report of Field Investigation No. 1219, dated December 10, 2014, official records in the Office of the State Engineer.

The State Engineer finds that water is available for appropriation from Railroad Pass Spring No. 2.

The point of diversion for Application 83024 also revealed an iron pipe protruding from the hillside and water was observed to be flowing approximately ½ gpm. The water from the iron pipe was flowing into a rectangular steel trough that was approximately ¼ full. The trough also was partially filled with native soil. The area surrounding the trough was bare ground suggesting frequent use; however, no cattle were present at either site at the time of inspection. The State Engineer finds that water is available for appropriation from Railroad Pass Spring No. 1.

IV.

Applications 83023 and 83024 were protested by Pete and Julian Goicoechea (Goicoechea) on grounds that this water is located in a common allotment that has been grazed by Goicoechea since 1978. The files for Applications 83023 and 83024 include documentation from the Bureau of Land Management (BLM), Egan Field Office, that shows Little Paris Sheep Company, LLC is the authorized Grazing Permittee for this area, which is within the Corta Allotment (10033). The described points of diversion and places of use of Applications 83023 and 83024 are located within the Corta Allotment (10033). 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 Corta Allotment (10033) through the BLM.

The protest presented by Goicoechea also states that a vested claim will be brought forward by Goicoechea once the process of adjudication of surface waters of this basin is initiated. As previously stated, the State Engineer found that a search of the records of the Office of the State Engineer failed to locate any active water rights on file under the sources considered here. Also, at present, an adjudication of the Diamond Valley Hydrographic Basin (153) has been initiated by State Engineer's Orders 800, 801 and 802. The State Engineer finds that the adjudication described under State Engineer's Orders 800, 801 and 802 does not prevent filing a claim of vested water right with the

Office of the State Engineer. The State Engineer finds that no claim of vested water right has been filed on the Railroad Pass Springs No. 1 and No. 2.[4]

The final protest issue included in the protest of Goicoechea concerns the granting of a water right exclusively for sheep use, 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. The State Engineer finds that stockwater use is considered a beneficial use for water under Nevada water law. [5]

V.

The first protest issue included in the protest submitted by Eureka County asserts that virtually every surface water source; spring, seep, or stream, within the Diamond Valley Hydrographic Basin has an associated undetermined vested water right. It has been previously found in this ruling that a search of the records of the Office of the State Engineer failed to locate any active water rights on file in the Office of the State Engineer for these sources.

Also embodied within Item 1 of the protest submitted by Eureka County is the statement that there is no water available for appropriation at the proposed source of supply, that the proposed use conflicts with or will impair and interfere with existing rights and would threaten to prove detrimental to the public interest. The State Engineer finds that from Field Investigation No. 1219, conducted on September 23, 2014, that water was observed flowing from both Railroad Pass Spring Nos. 1 and 2 and that water is available for appropriation. Furthermore, the State Engineer finds considering the arid climatic conditions in the state of Nevada that Railroad Pass Spring Nos. 1 and 2 may very well be ephemeral sources and may not provide a full duty of water each and every year. The State Engineer finds that granting a water right for a spring source does not guarantee delivery of water and again, a search of the records of the Office of the State Engineer failed to find any water rights on file attached to these sources. The State

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[4] The State Engineer notes that Protestant Goicoechea was present at the November 15 through 22, 2013, hearings before the State Engineer regarding other protested applications in Diamond Valley. He was made known at this hearing that an adjudication had been initiated in Diamond Valley.

[5] NRS § 533.490.

Engineer finds that stockwater, the described manner of use on Applications 83023 and 83024, will not conflict, impair and/or interfere with existing rights and will not be detrimental to public interest.

Item No. 2 of the protest filed by Eureka County states that Eureka County supports ranching and livestock grazing, that their protest does not challenge the need to provide stockwater to support the permit to graze sheep but is meant to ensure that any additional new water appropriations on the springs at issue under Applications 83023 and 83024 do not conflict with existing rights. Reiterating, a search of the records of the State Engineer failed to locate any existing water rights on these sources. The State Engineer finds Applications 83023 and 83024 will not conflict with existing rights.

Item No. 3 of the protest from Eureka County states that the State Engineer should not even consider Applications 83023 and 83024 until the effort has been made to document and determine existing vested rights on the proposed source of supply, and then any consideration of Applications 83023 and 83024 must ensure that conflicts with existing rights will not occur. In regards to conflicting with existing rights, a search of the records of the Office of the State Engineer failed to locate any existing water rights on file under these sources, and therefore the State Engineer finds Applications 83023 and 83024 will not conflict with existing rights.

The State Engineer finds that if approved, Applications 83023 and 83024 would include within the terms of the permits that they be issued subject to all existing rights on file under the sources, which includes Claims of Vested Right that have not yet been filed and have been found to be substantiated through the adjudication process.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[6]

II.

The State Engineer is prohibited by law from granting a permit under an application that requests to appropriate public waters where:[7]

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[6] NRS Chapter 533.
[7] NRS § 533.370(2).

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.

III.

The State Engineer concludes that The Little Paris Sheep Company, LLC is the authorized BLM range user within the Corta Grazing Allotment (10033) and that the points of diversion and places of use under Applications 83023 and 83024 are located within the Corta Grazing Allotment (10033).

The State Engineer concludes that water is available for appropriation and there are no existing rights on file under the sources described as Railroad Pass Spring Nos. 1 and 2, and therefore Applications 83023 and 83024 will not conflict with existing rights or threaten to prove detrimental to the public interest.

The State Engineer concludes that stockwater is an accepted manner of use for putting water to beneficial use in the state of Nevada.

The State Engineer concludes that the spring sources considered here may be ephemeral sources and that granting a water right for these sources does not guarantee delivery of water.

RULING

The protests to Applications 83023 and 83024 are overruled and the applications are hereby approved, subject to existing rights and the payment of statutory permit fees.

Respectfully submitted,

J. K. P.E.

JASON KING, P.E.
State Engineer

Dated this 23rd day of
March, 2015.