

IN THE MATTER OF APPLICATIONS 38550,)
39753 AND 39754 FILED BY CAROLE MARSH)
CARTER ON SURFACE WATER SOURCES IN)
PENoyer VALLEY, LINCOLN COUNTY,)
NEVADA)

RULING

INTRODUCTION

Applications 38550, 39753 and 39754 were filed by Carole Marsh Carter to appropriate water from separate surface water sources as described under the findings of fact for stock watering purposes within the Penoyer Valley (10-170) in Lincoln County, Nevada.

FINDINGS OF FACT

Application 38550 was filed on July 12, 1979, in the name of Carole Marsh Carter to appropriate 3.0 c.f.s. of water from Carter Spring for stock watering (200 cattle) and domestic purposes. The point of diversion is located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9, T.1N., R.56E., M.D.B. & M. and the place of use is located within the W $\frac{1}{2}$ E $\frac{1}{2}$ Section 9, and all of Sections 16 and 20, T.1N., R.56E., M.D.B. & M.

Applications 39753 and 39754 were filed on November 20, 1979, in the name of Carole Marsh Carter, each to appropriate 3.0 c.f.s. of water for stock watering (200 cattle) and domestic purposes. The source under Application 39753 is described as Pemberton Spring and the source under Application 39754 is described as Messier Spring. The point of diversion under both applications is located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9, T.1N., R.56E., M.D.B. & M., and the place of use under both is within the W $\frac{1}{2}$ E $\frac{1}{2}$ Section 9, and all of Sections 16 and 20, T.1N., R.56E., M.D.B. & M., which corresponds with the place of use described under Application 38550 in the preceding paragraph.

Notice of application was published under all three applications in compliance with NRS 533.360. The deadline for the filing of protest as provided under NRS 533.365 was May 10, 1980, under Application 38550, August 9, 1980 under Application 39753 and August 23, 1980 under Application 39754.

II

A protest to the granting of Application 38550 was timely filed with the State Engineer on May 2, 1980, by the U.S. Government, Bureau of Land Management, on the following grounds:

"That the water is not available for appropriation under state law because it is already Federally reserved as a public water. Land containing this water was withdrawn by E.O. April 17, 1926, as a public water reserve No. 107 (43 CFR 2311)."

Separate protests to the granting of Applications 39753 and 39754 were timely filed with the State Engineer on July 16, 1980 by the U.S. Government, Bureau of Land Management, on the following grounds:

"The water is located on public lands administered by the BLM. The appropriation of this water will interfere with multiple use management as directed by Congress. Wildlife, including deer, bird and small mammals depend on water from source. Current use: 20 deer, 45 cattle."

On July 1, 1980, the State Engineer's office also received a letter from Ross E. de Lipkau on behalf of Union Carbide Corporation whereby an informal protest or expression of concern was lodged in regard to Applications 39753 and 39754. This letter basically states that Union Carbide is the owner of record of permits for the appropriation of water within the Penoyer Ground Water Basin and that they have no objection to the use of springs within that basin for the watering of 200 head of cattle. However, they are concerned about the fact that both applications seek to appropriate 3.0 c.f.s. of water from the individual sources, an amount which appears to be excessive. It is their (Union Carbide's) position that they would have no objection to the granting of permits in the amount of 20 gallons per day per head for a total of 0.0062 c.f.s., or approximately 2.78 gallons per minute for the watering of 200 head of cattle. Union Carbide Corporation therefore protests the granting of a permit under these applications in any amount greater than 0.0062 c.f.s.

III.

Information on file in the State Engineer's office indicates that the sources under all three applications are located within the McCutchen Spring grazing allotment, that applicant Carple Marsh Carter has a current base property preference of 446 animal unit months within said allotment, and that 47 cattle could be licensed if a full season were used.

IV

There are currently no claims of vested right or valid appropriative rights of record in the State Engineer's office on the three sources described under Applications 38550, 39753 and 39754.

CONCLUSIONS

I

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

II

The State Engineer is required by statute to approve all applications made in proper form where:

- a) All fees have been paid which contemplate the application of water to beneficial use.
- b) The proposed use does not tend to impair the value of existing rights or to be otherwise detrimental to the public welfare.

III

The watering of livestock is declared by statute to be a beneficial use and the right to use water for that purpose may be acquired in the same manner as the right to use water for any other beneficial use.

IV

There is no evidence that subsisting or existing rights will be impaired or that the issuance of permits under Applications 38550, 39753 and 39754 will be detrimental to the public interest or orderly management of the public range.

V

The State Engineer's office considers an appropriation in the amount of 20 gallons per day per head to be sufficient for the watering of cattle and horses and, therefore, considers an appropriation of 0.0062 c.f.s. of water to be sufficient for the watering of 200 head of cattle.

VI

The State Engineer has no authority or jurisdiction for the granting of rights of access onto public range for stock watering purposes.

VII

Although information on record in the office of the State Engineer indicates that the McCutchen Spring allotment currently allows for 446 aum's with a 10 month (June through March) period of grazing each year, which

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allows for a current usage of approximately 47 head of cattle, these allowances are subject to future increase or decrease depending upon the condition of the range. Therefore, the granting of a permit for the watering of 200 head of cattle would allow for future increases in grazing aum's within this allotment. In the event the grazing allowance is not increased within the period for beneficial use allowed under a permit, the certificate ultimately issued would be reduced to the number of cattle actually watered at each source.

RULING

The protests to the granting of Applications 38550, 39753 and 39754 are herewith overruled on the grounds that the granting of permits will not tend to impair the value of existing rights or be otherwise detrimental to the public welfare. Upon payment of the statutory permit fees, a permit will be issued under each application which will be limited to 0.0062 c.f.s. or sufficient to water 200 head of cattle. The total combined amount of water under these applications shall not exceed that amount sufficient to water 200 head of cattle. The permits will be issued with the specific provision that said issuance does not extend to the permittee the right of ingress and egress onto the public range.

Respectfully submitted,

William J. Newman

William J. Newman
State Engineer

Dated this 6th day of
November, 1980

WJN/BAR/js