

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

IN THE MATTER OF APPLICATION 10892)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF NIGGER CREEK, WITHIN THE)
SPRING VALLEY GROUNDWATER BASIN)
(184), WHITE PINE COUNTY, NEVADA.)

RULING
4617

GENERAL

I.

Application 10892 was filed on November 2, 1942, by G.W. Rogers to appropriate 5.0 cubic feet per second (cfs) of water from Nigger Creek for the irrigation of 200 or more acres of land located within the E $\frac{1}{2}$ SE $\frac{1}{2}$ of Section 26, the N $\frac{1}{2}$ NE $\frac{1}{2}$ of Section 35, and the SE $\frac{1}{2}$ NE $\frac{1}{2}$ of Section 26, all located within T.17N., R.67E., M.D.B. & M. The proposed point of diversion is described as being located within the SE $\frac{1}{2}$ SE $\frac{1}{2}$ of Section 35, T.17N., R.67E., M.D.B. & M.¹

FINDINGS OF FACT

I.

Application 10892 was timely protested by R.A. Yelland. By ruling dated July 18, 1946, the State Engineer denied application 10892. A timely appeal from that ruling was filed in the Seventh Judicial District Court of the State of Nevada. The records of the State Engineer indicated on October 30, 1947, a default was entered and Plaintiff's Complaint thereby entered.¹ The State Engineer finds that by letter dated September 24, 1970, the State Engineer was informed that no Judgement by Default was ever entered by the Court.¹

II.

The applicant was requested by certified letter dated January 8, 1998, to provide the office of the State Engineer with evidence of any continued interest that he may have in pursuing Application 10892. The applicant was also informed that if a response was not

¹ File No. 10892, official records in the office of the State Engineer.

received within 30 days from the date of the letter, the application would be denied. The January 8, 1998, letter was returned to the office of the State Engineer with the envelope stamped "Addressee Unknown" by the United States Postal Service. A second notice was sent to the applicant at the address of record on February 13, 1998. To date, no information indicating any continued interest by the applicant in pursuing Application 10892 has been received in the office of the State Engineer.¹ It has been a long standing policy within the State Engineer's office that it is the applicant's responsibility to inform said office of any changes which may occur in the ownership and address associated with a specific water right file.

The State Engineer finds that the owner of record under Application 10892 was properly noticed of the opportunity to express his continued interest in pursuing Application 10892, but has failed to do so; therefore, Application 10892 may be considered for denial.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:³

- 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.

² NRS Chapter 533.

³ NRS § 533.370(3).

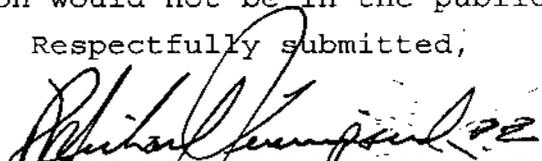
III.

On January 8, and February 13, 1998, the applicant was requested by the office of the State Engineer to provide information concerning any continued interest which he may have in pursuing Application 10892. The applicant was informed that a failure to respond to these requests would represent a lack of interest in this matter and would result in said application being considered for denial. The applicant failed to provide any indication that he intends to move forward with Application 10892. Therefore, the State Engineer concludes that it would not be in the public interest to approve an application which the applicant no longer intends to pursue.

RULING

Application 10892 is hereby denied on the grounds that granting said application would not be in the public interest.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 7th day of
April, 1998.