

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

IN THE MATTER OF APPLICATIONS)
28100 AND 28101 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
FROM SHADY SPRING NO. 1 AND)
SHADY SPRING NO. 2 WITHIN THE)
CLOVER VALLEY HYDROGRAPHIC)
BASIN (177), ELKO COUNTY,)
NEVADA.)

RULING
5201

GENERAL

I.

Application 28100 was filed on February 14, 1974, in the names of Kenneth L. and Deby A. Johns to appropriate 0.1 cubic feet per second of water (cfs) from Shady Spring No. 1 for stockwatering purposes. The place of use is located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T.36N., R.61E., M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 34.¹

II.

Application 28101 was filed on February 14, 1974, in the names of Kenneth L. and Deby A. Johns to appropriate 0.1 cfs of water from Shady Spring No. 2 for stockwatering purposes. The place of use is located within Lot 7 of Section 35, T.36N., R.61E., M.D.B.&M. The point of diversion is described as being located within Lot 7 of said Section 35.²

III.

The applications were timely protested by Taylors, Ltd. on the following grounds:¹

The protestant is lessee from the Southern Pacific Land Company of the real property upon which the Applicants' point of diversion is situated. The protestant, through Southern Pacific Land Company and its predecessors in interest, and the United

¹ File No. 28100, official records in the Office of the State Engineer.

² File No. 28101, official records in the Office of the State Engineer.

States Forest Service, claims a vested right with a 1906 priority to water 150 cattle from March 1st to November 1st of each year.

Wherefore the protestant prays that the application be issued subject to the aforesaid prior rights.

IV.

The applications were timely protested by Blair G. Johns on the following grounds:²

This water has been appropriated and is used by the protestant on his land in the area. It is part of the protestant's existing water right. Any diversion of water from these springs will reduce the flow of the protestant's water from that area.

Wherefore the protestant prays that the application be denied.

FINDINGS OF FACT

I.

The applicants and their agent were notified by certified mail dated September 13, 2002, to advise the Office of the State Engineer in writing if they were interested in pursuing Applications 28100 and 28101. The applicants and their agent were advised that failure to respond within 30 days would result in denial of the applications. The certified letter to the applicants was returned to the Office of the State Engineer by the United States Post Office stamped "Returned To Sender". A properly endorsed certified mail receipt was received by the Office of the State Engineer from the applicants' agent on September 19, 2002.¹

To date, no information in this matter has been submitted to the State Engineer's Office. The State Engineer finds that the applicants and their agent were properly notified of the need to supply additional information regarding any continued interest they may have in pursuing Applications 28100 and 28101 and have failed to submit any information relating to the matter.

II.

The State Engineer finds that it is the responsibility of the applicants and their agent, or their successors in interest, to keep this office informed of a valid current mailing address.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.⁴

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁵

- 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 or change threatens to prove detrimental to the public interest.

IV.

The applicants and their agent were properly notified of the requirement for additional information concerning these applications and have failed to submit the information to the State Engineer's Office. The State Engineer concludes that the failure to respond affirms the applicants' lack of interest in pursuing Applications 28100 and 28101.

³ NRS chapter 533.

⁴ NRS § 533.375.

⁵ NRS § 533.370(3).

RULING

Applications 28100 and 28101 are hereby denied on the grounds that neither the applicants or their agent submitted the information requested by the State Engineer's Office and that without this information the granting of the applications would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest claims.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 10th day of

January, 2003.