

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

IN THE MATTER OF APPLICATION 58404)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE BIG SMOKY VALLEY)
HYDROGRAPHIC BASIN (137B), NYE)
COUNTY NEVADA.)

RULING

#5260

5260

GENERAL

I.

Application 58404 was filed on December 16, 1992, by Frank Sokol to appropriate 5.4 cubic feet per second of water from an underground source for irrigation purposes. The proposed place of use is 320 acres described as being located within W $\frac{1}{2}$ of Section 25, T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 25.¹

II.

The application was timely protested by Russell Berg on the following grounds:¹

We have stockwatering rights on Jake's well, which is located in Section 24, T11N, R43E, approximately 1 mile from the underground source applied for under this application. It is our belief that our well will be in jeopardy if this application is granted.

III.

The application was timely protested by the United States Department of Interior, Bureau of Land Management on the following grounds:¹

Appropriation would adversely impact existing beneficial use at Jake's Well located in T.11N. R.43E Section 13 SENW. The Bureau of Land Management holds a cooperative agreement with the permittees that utilize Jake's Well.

¹ File No. 58404, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

The applicant and his agent were notified by certified mail dated March 3, 2003, to submit additional information to the State Engineer's Office and to advise this office in writing if he was interested in pursuing Application 58404. The applicant was warned that failure to respond within 30 days would result in denial of the application. The certified letter to the applicant was returned to the Office of the State Engineer by the U.S. Postal Service stamped "Forwarding Order Expired."¹ The receipt for the certified letter to the applicant's agent was returned to the office of the State Engineer on March 19, 2003. To date, the applicant nor his agent have expressed an interest in pursuing this application. The State Engineer finds that the applicant and his agent were properly notified of the request for additional information regarding interest in pursuing Application 58404 and have failed to respond.

II.

The State Engineer finds that it is the responsibility of the applicant, its agent, or his successor in interest to keep this office informed of a current mailing address.

III.

The State Engineer finds that there has been no correspondence from the applicant regarding Application 58404 for over 10 years.¹

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 under an application to appropriate the public water where:³

- 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.

III.

The applicant and his agent were properly notified of the requirement for additional information concerning interest in this application and have failed to submit this information to the State Engineer's Office. The State Engineer concludes that the failure to express any interest in the application for over 10 years and failure to maintain a current address demonstrates the applicant's lack of interest in pursuing Application 58404. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under an application for which no interest is expressed.

² NRS chapter 533 and 534.

³ NRS § 533.370(3).

RULING

Application 58404 is hereby denied on the grounds that its issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



HUGH RICCI, P.E.
STATE ENGINEER

HR/TW/dl

Dated this 6th day of
June, 2003.