

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

IN THE MATTER OF APPLICATION 55386)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE DIXIE CREEK)
HYDROGRAPHIC BASIN (48), ELKO)
COUNTY, NEVADA.)

RULING
5354

GENERAL

I.

Application 55386 was filed on October 19, 1990, by the Te-Moak Livestock Association, to appropriate 0.05 cubic feet per second of water from an underground source (Gravel Pit Well) for stockwatering purposes. The proposed place of use is described as being located within Lot 3 of Section 5, Lot 4 of Section 7, and the NW¼ NW¼ of Section 8, T33N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 18, T33N., R.56E., M.D.B.&M.¹

II.

Application 55386 was timely protested by the U.S.D.I. Bureau of Land Management on the following grounds:¹

The point of diversion for application 55386 is located on public land. The Bureau of Land Management is currently pursuing unauthorized livestock use action against the Te-Moak Band of Western Shoshone, Te-Moak Livestock Association as they have refused to pay their grazing fees since 1984.

On February 4, 1991, the BLM received a Range Improvement Permit Application from Te-Moak Livestock Association for the well in water right application 55386. This Range Improvement Permit Application was denied by BLM on April 2, 1991. Authority for this action can be found in 43 CFR 4150.3(e).

¹ File No. 55386, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

The applicant and its agent were notified by certified mail dated December 31, 2003, to submit additional information regarding Application 55386 to the State Engineer's Office. 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 "Unclaimed". This letter was re-sent by regular mail on January 28, 2004. A properly endorsed certified mail receipt was received in the Office of the State Engineer dated January 8, 2004, from the applicants' agent. To date, the applicant and its agent have expressed no interest in pursuing this application and have not submitted the additional information requested.¹ The State Engineer finds that the applicant and its agent were properly notified of the request for additional information regarding interest in pursuing Application 55386 and have failed to respond.

II.

The State Engineer finds that there has been no correspondence from the applicant or its agent in regard to this application for over 12 years.¹ The State Engineer finds that it is the responsibility of the applicant or its agent to keep this office informed of a current mailing address.

III.

Under Application 55386, the applicant is seeking to appropriate water from an existing well. The well, referred to as the gravel pit well, was drilled under construction waiver #C-58, for the Nevada Department of Transportation for highway construction purposes.² There is no evidence in File No. 55386, showing the Te-Moak Livestock Association either owns the well or has permission to use the well for stockwatering purposes.¹ The State Engineer finds that the Te-Moak Livestock Association does not own the gravel pit well and has no agreement with the Nevada Department of Transportation to use this well.

² Well Driller's Report, Log No. 30202, official records in the Office of the State Engineer.

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:⁴

- 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 and have failed to submit the information to the State Engineer's Office. The State Engineer concludes that the failure to express any interest in these applications for over 12 years and the failure to submit requested information demonstrates the applicant's lack of interest in pursuing Application 55386. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

V.

The State Engineer concludes that the applicant does not own or control the existing well at the proposed point of diversion under Application 55386 and therefore, cannot place the requested water to beneficial use.

³ NRS chapters 533 and 534

⁴ NRS § 533.375.

⁴ NRS § 533.370(4).

RULING

Application 55386 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 6th day of

May, 2004.