

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

IN THE MATTER OF APPLICATION)
42526 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF A SURFACE)
SOURCE WITHIN THE DIAMOND)
VALLEY HYDROGRAPHIC BASIN)
(153), EUREKA COUNTY, NEVADA.)

RULING

#5382

GENERAL

I.

Application 42526 was filed on September 25, 1980, by Denny S. and Della C. Mulford, and later assigned to Diamond Springs Ranch, LLC, to appropriate 3.0 cubic feet per second of water from Unnamed Spring (Spring No.1) for irrigation purposes. The proposed place of use is described as being 280 acres of land located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T26N., R.53E., and Lots 3 and 4 of Section 5, T.25N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T.26N., R.53E., M.D.B.&M.¹

II.

Application 42526 was timely protested by the U.S.D.I. Bureau of Land Management on the following grounds:¹

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 Land containing this water was withdrawn by E.O. April 17, 1926 as Public Water Reserve No. 107 (43 CFR 2311). That the subject lands are vacant Public Lands, and that the applicant has no authorization or right to use or convey the applied for waters on or across such lands.

FINDINGS OF FACT

I.

The applicants and their agent were notified by certified mail dated December 13, 1999, to submit additional information regarding interest in pursuing Application 42526

¹ File No. 42526, official records in the Office of the State Engineer.

to the State Engineer's Office. The applicants were warned that failure to respond within 30 days would result in denial of the application. Properly endorsed certified mail receipts were received in the Office of the State Engineer on December 23, 1999, for the applicants, and December 17, 1999, for their agent. On January 21, 2000, the applicants were again notified by certified mail and asked to submit additional information regarding interest in pursuing Application 42526. A properly endorsed certified mail receipt was received from the applicants in the Office of the State Engineer on January 31, 2000. To date the applicants and their agent have expressed no interest in pursuing this application.¹ The State Engineer finds that the applicants and their agent were properly notified of the request for additional information regarding interest in pursuing Application 42526 and have failed to respond.

CONCLUSIONS

I.

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

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.³

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.

² NRS chapter 533.

³ NRS § 533.375.

⁴ NRS § 533.370(4).

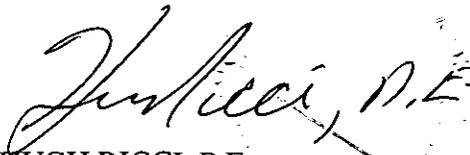
IV.

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 submit additional information expressing interest in the application demonstrates the applicants' lack of interest in pursuing Application 42526. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

RULING

Application 42526 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 18th day of
June, 2004.