

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

IN THE MATTER OF APPLICATIONS )  
38641 AND 38644 FILED TO )  
APPROPRIATE THE PUBLIC WATERS )  
FROM SPRING SOURCES WITHIN THE )  
PINE VALLEY HYDROGRAPHIC BASIN )  
(53), EUREKA COUNTY, NEVADA. )

**RULING**

**# 5573**

**GENERAL**

**I.**

Application 38641 was filed on July 23, 1979, by Frank Paxton and Family, and later assigned to Kenneth R. Buckingham to appropriate 0.2 cubic feet per second (cfs) of water for the irrigation of 31.5 acres of land. The proposed place of use is described as being located within portions of the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 10 and the N $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 15, T.24N., R.49E., M.D.B.&M. The proposed point of diversion is Indian Spring No. 2, which is described as being located in the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 16, T.24N., R.49E., M.D.B.&M.<sup>1</sup>

**II.**

Application 38644 was filed on July 23, 1979, by Frank Paxton and Family, and later assigned to Kenneth R. Buckingham to appropriate 0.1 cfs of water for stockwater purposes. The proposed place of use is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 17, T.23N., R.50E., M.D.B.&M. The proposed point of diversion is Red Canyon Spring No. 3, which is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 17.<sup>2</sup>

**III.**

Application 38641 was timely protested by the U.S. Bureau of Land Management on grounds not considered in this ruling.<sup>1</sup>

---

<sup>1</sup> File No. 38641, official records in the Office of the State Engineer.

<sup>2</sup> File No. 38644, official records in the Office of the State Engineer.

## **FINDINGS OF FACT**

### **I.**

An informal field investigation was conducted on the two spring sources described by Applications 38641 and 38644.<sup>1</sup> After the conclusion of these investigations, it became clear that the applicant would need to provide additional information before any further action could be taken with respect to Applications 38641 and 38644. On May 23, 2005, a certified letter was sent to the applicant and his agent requesting additional information be provided to the Office of the State Engineer. The applicant was warned that failure to respond within thirty (30) days from the date of the letter would result in denial of the applications. Properly endorsed certified mail receipts from the applicant and his agent were received in the Office of the State Engineer on May 26 and May 27, 2005, respectively. To date, there has been no response from the applicant or his agent in response to the certified notice.

The State Engineer finds that the applicant and his agent were properly notified of the request for additional information and have failed to respond.

## **CONCLUSIONS**

### **I.**

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

### **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.<sup>4</sup>

### **III.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>5</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

---

<sup>3</sup> NRS chapter 533.

<sup>4</sup> NRS § 533.375.

<sup>5</sup> NRS § 533.370(4).

- C. the proposed use or change conflicts with protectible interests in 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 applicant and his 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 the applications and the failure to submit additional information demonstrates the applicant's lack of interest in pursuing Applications 38641 and 38644.

**RULING**

Applications 38641 and 38644 are hereby denied on the grounds that their issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 9th day of  
March, 2006.