

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

IN THE MATTER OF APPLICATIONS 40418,)
40419, 40616, 41365 AND 41366 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
UPPER REESE RIVER, GROUNDWATER BASIN,)
(56) LANDER COUNTY, NEVADA.)

RULING

4268

GENERAL

I.

Applications 40418¹ and 40419² were filed on January 28, 1980, by Argus Resources, Inc., to appropriate 1.0 cubic feet per second (cfs) each of water from Slaughter House Spring and Lower Emigrant Spring, respectively, for mining, milling and domestic purposes for use within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 18, T.19N., R.44E., M.D.B.&M. The points of diversion are described as being located within Lot 2 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) and SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, respectively, T.19N., R.44E., M.D.B.&M.

II.

Application 40616 was filed on February 22, 1980, by Argus Resources, Inc., to appropriate 1.0 cfs of water from Upper Emigrant Spring for mining, milling and domestic purposes for use within NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 18, T.19N., R.44E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, T.19N., R.44E., M.D.B.&M.³

¹ File No. 40418, official records in the Office of the State Engineer.

² File No. 40419, official records in the Office of the State Engineer.

³ File No. 40616, official records in the Office of the State Engineer.

III.

Applications 41365⁴ and 41366⁵ were filed on May 15, 1980, by Argus Resources, Inc., to appropriate 1.0 cfs of water each from Lower Kilborn Spring and Upper Kilborn Spring for mining, milling and domestic purposes for use within NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 18, T.19N., R.44E., M.D.B.&M. The points of diversion are described as being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 18, T.19N., R.44E., M.D.B.&M.^{4,5}

IV.

Application 40418 was timely protested on August 14, 1980, by U.S. Forest Service on the following grounds:

1. The proposed point of diversion is on National Forest Land.
2. The source is a spring that has been used continuously to water livestock and wildlife since prior to 1870 which constitutes a vested right (Proof #03395) of the Forest Service for livestock watering purposes. This application would adversely affect the Forest Service vested right.

The protestant requested that the application be denied and that the use of water claimed by the Forest Service be confirmed and that an order be entered establishing the right.¹

V.

Applications 40418, 40419, 40616, 41365 and 41366 were timely protested on August 15, and August 19, 1980, by Joy Brandt on the grounds that the surface water to Slaughterhouse Spring, Lower Emigrant Spring, Upper Emigrant Spring, Lower Kilborn Spring and Upper Kilborn Spring had been appropriated by the Protestant.

⁴ File No. 41365, official records in the Office of the State Engineer.

⁵ File No. 41366, official records in the Office of the State Engineer.

The protestant requested that the applications be denied and that the use of water claimed by the protestant be confirmed and that an order be entered establishing said right.¹⁻⁵

VI.

Applications 40418, 40419, 40616, 41365 and 41366 were timely protested on September 8, 1980, by Howard W. and Barbara C. Wolf on the grounds that water from the springs had been used to water cattle since the late 1890's.

The protestant requested that the applications be denied¹⁻⁵

VII.

By correspondence dated October 21, 1980, the U.S. Forest Service withdrew its protest to Application 40418.¹

VIII.

By notice dated August 31, 1984, the State Engineer notified the applicant and protestants that a formal field investigation would be held on September 17, 1984, in the matter of protested Applications 40418, 40419, 40616, 41365 and 41366.¹⁻⁵

IX.

A "Report of Field Investigation" was issued by the State Engineer's Office which stated in part that after a discussion, a resolution was reached in which the protestants agreed to formally withdraw their protests and that Robert W. Hughes agreed to draw up an agreement that all parties would review, sign and submit to the State Engineer within 30 days.¹⁻⁵

X.

By correspondence dated September 28, 1994, the State Engineer's Office notified Mr. Robert W. Hughes to submit the Agreement with necessary signatures within 30 days. Mr. Hughes was also informed that protestants would also need to send letters formally withdrawing their protests.¹

XI.

A tentative unsigned Water Rights Agreement between Austin Resources, Inc. (formerly Argus Resources, Inc.), Joy Brandt, and

Howard W. and Barbara C. Wolf, was received from Mr. Robert W. Hughes on November 9, 1984, and another on November 13, 1984. Mr. Hughes requested that the State Engineer's Office review the agreement and note any changes and return, or advise that the Agreement was satisfactory, and then a final Agreement would be prepared for signature and sent out.¹

XII.

By correspondence to Robert W. Hughes, dated November 21, 1984, the State Engineer's Office acknowledged receipt of the unsigned proposed Agreement and noted that it appeared to cover the situation.¹

FINDINGS OF FACT

I.

By certified correspondence to Robert W. Hughes, dated January 7, 1985, and copied to Joy Brandt and Howard and Barbara Wolf, the State Engineer's Office requested Mr. Hughes to advise the State Engineer on progress toward finalizing the Agreement. A 30 day time limit was assigned for submission of a response.¹ An endorsed receipt was received from Robert W. Hughes on January 11, 1985. The notice to Joy Brandt was returned by the United States Postal Service labeled "Return to Sender-Not Deliverable as Addressed and Unable to Forward". No return receipt was received from the Wolfs.¹

By certified notice to applicant, agent and other affiliated parties dated August 10, 1989, the State Engineer's Office again requested submission of the signed Agreement.¹ The notice once again assigned a 30 day time limit from the date of the notice for submission. Endorsed receipts were received from all the addressees. The State Engineer finds that to date no finalized Agreement has been received.¹

II.

By certified notice to applicant, agent and other affiliated parties dated May 31, 1995, the State Engineer's Office again

requested submission of the signed Agreement.¹ Furthermore, pursuant to NRS 533.375, the State Engineer's Office also requested submission of additional justification data and information concerning the annual consumptive use under the applications. The notice indicated that if the information was not received within 30 days the State Engineer would assume the applicant was no longer interested in pursuing the applications and appropriate action would be considered regarding denial of the applications. The notice sent to Robert Hughes was returned by the United States Postal Service labelled "Return to Sender-Attempted Not Known". The notice to W.R. Noack, Argus Resources, Inc., was returned by the United States Postal Service labelled "Returned to Sender-Undeliverable As Addressed-No Forwarding Order On File". Endorsed receipts were received from the remaining addressees.¹ The State Engineer finds that it is the responsibility of the applicant or his successor in interest to keep this office informed of their current mailing address. The State Engineer also finds that to date no finalized Agreement or additional mining justification information has been received.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action and determination.⁶

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.⁷

⁶ NRS 533.

⁷ NRS 533.375.

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁸

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

IV.

The applicant has failed to submit the Agreement document and information requested by the State Engineer's Office. The State Engineer concludes that without the additional data sufficient information is not available to properly guard the public interest.

RULING

Applications 40418, 40419, 40616, 41365 and 41366 are hereby denied on the grounds that the applicant has not submitted the data and information requested by the State Engineer's Office, and that without this information the granting of the applications would be detrimental to the public interest. No finding is made on the merits of the protests.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/DJL/ab

Dated this 15th day of
December, 1995.

⁸ NRS 533.370(3).