

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

IN THE MATTER OF APPLICATIONS 38417)  
AND 38506 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF AN UNNAMED SPRING )  
AND SUMMIT CREEK, RESPECTIVELY, IN )  
BUFFALO VALLEY GROUNDWATER BASIN )  
(131), PERSHING COUNTY, NEVADA. )

RULING

# 4282

GENERAL

I.

Application 38417 was filed on June 22, 1979, by Barbara Colleen Hopping to appropriate 0.1 cubic feet per second (cfs) of water from an unnamed spring for domestic and irrigation purposes on 140 acres. The point of diversion is described as being within SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 17, T.32N., R.41E., M.D.B.&M.<sup>1</sup>

II.

Application 38506 was filed on July 9, 1979, by Barbara Colleen Hopping to appropriate 2.7 cfs of water from Summit Creek for irrigation and domestic purposes on 160 acres. The point of diversion is described being within NW $\frac{1}{4}$ SE $\frac{1}{4}$  Section 17, T.32N., R.41E., M.D.B.&M.<sup>2</sup>

III.

Application 38417 was timely protested on April 29, 1980, by Clay E. and Jean H. Tipton on the following grounds:

The waters of this spring flow into and are commingled with the waters of Summit Creek. These waters are subject to Certificate No. 3107 (Application 10972); that further these waters have been used for irrigation and for livestock watering since prior to 1905 by the Protestants and their predecessors in interest and the Protestants have vested rights therein. That there is no available excess waters for the applicant.

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<sup>1</sup> File No. 38417, official records in the Office of the State Engineer.

<sup>2</sup> File No. 38506, official records in the Office of the State Engineer.

The protestants requested that the application be denied.<sup>1</sup>

Application 38417 was also timely protested on May 22, 1980, by the United States, Bureau of Land Management on the following grounds:

The unnamed spring cited in application 38417 is located on land owned by the United State[sic] of America and administered for the public by the Bureau of Land Management. The water in this spring is part of the public water reserve and not subject to private appropriation. The public water reserve was created by the President's Executive Order of April 1926 (PWR 107). The water is reserved for congressionally mandated multiple use management of the public lands as outlined in the Federal Land Policy and Management Act of 1976 and the Taylor Grazing Act of 1934. The amount of water reserved is the entire flow. Application 38417 was submitted in support of Desert Land Entry application N25480 which has been denied by the Bureau of Land Management and therefore Barbara Colleen Hopping cannot make beneficial use of water from this spring.

The protestant requested that the application be denied.<sup>1</sup>

#### IV.

Application 38506 was timely protested on April 29, 1980, by Clay E. and Jean H. Tipton on the following grounds:

The flow of water of Summit Creek is less than 0.163 cfs during the period from January 1st to December 31st of each year and as such the entire waters of Summit Creek have been appropriated by the undersigned as set forth in Certificate No. 3107 (Application 10972), dated April 26, 1948 by the State Engineer's Office. That there is no available excess waters for the application; at any time that the waters exceed the minimum of 0.136 cfs such excess waters have been appropriated by the undersigned as a vested right prior to 1905.

The protestant requested that the application be denied.<sup>2</sup>

Application 38506 was also timely protested on May 22, 1980, by the United States, Bureau of Land Management on the following grounds:

Application 38506 was submitted in support of Desert Land Entry application N25480 which has been denied by the Bureau of Land Management and therefore Barbara Colleen Hopping cannot make beneficial use of water from Summit Creek. Other complicating factors include water

certificate 3084 to R.B. Stewart for Summit Spring which is tributary to Summit Creek and Certificate 3107 to Clay Hughs Tipton for water from Summit Creek.

The protestant requested that the application be denied.<sup>2</sup>

#### FINDINGS OF FACT

##### I.

The applicant, Barbara Colleen Hopping, was notified by mail on September 20, 1994, to notify the State Engineer in writing if the applicant wished to pursue the permitting process and to submit additional information regarding the status of the applicant's Desert Land Entry applications to the State Engineer.<sup>1,2</sup> The letter was returned by the United States Postal Service labelled "moved - return to sender."<sup>1</sup>

The applicant, Barbara Colleen Hopping, was again notified by certified mail on October 25, 1994, to submit the information requested. This letter was also returned by the United States Postal Service labelled "unclaimed".<sup>1</sup> The State Engineer finds it is the responsibility of the applicant or her successor in interest to keep this office informed of a current mailing address.

##### II.

The State Engineer mailed the request for additional information by both regular and certified mail through the United States Postal Service to the current address on file for the applicant.<sup>1,2</sup> The State Engineer finds that a reasonable attempt to notice the applicant has been made and that applicant has been correctly noticed.

#### CONCLUSIONS

##### I.

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

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

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 a permit under an application to appropriate the public waters where:<sup>5</sup>

- 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 State Engineer's Office has made a reasonable attempt to notice the applicant at the address on file in the records of the Office of the State Engineer of the need for additional information and an indication of the applicants' desire to pursue these applications. The applicant has failed to keep the Office of the State Engineer informed as to a current mailing address and to submit the information requested by the State Engineer's Office. The State Engineer concludes that without the additional information sufficient information is not available to properly guard the public interest.

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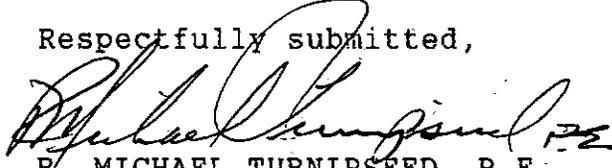
<sup>4</sup> NRS 533.375.

<sup>5</sup> NRS 533.370(3).

RULING

Applications 38417 and 38506 are hereby denied on the grounds that the applicant has not submitted the 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,



E. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/DJL/ab

Dated this 16th day of  
January, 1996.