

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

IN THE MATTER OF APPLICATION 52689)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE MARY'S RIVER AREA)
GROUNDWATER BASIN (042), ELKO)
COUNTY, NEVADA.)

RULING

4839

GENERAL

I.

Application 52689 was filed on November 4, 1988, by G. Sterling Nixon to appropriate 1.0 cubic foot per second of underground water for irrigation and domestic purposes within 10.00 acres of land located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T.39N., R.62E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 28.¹

FINDINGS OF FACT

I.

Every water rights application that is accepted for filing in the office of the State Engineer must contain a description of the proposed works of diversion along with an estimate of the time that will be necessary to construct them. Application 52689 contains information that would indicate that the applicant intends to utilize an existing petroleum exploration well identified as RAD Oil Company Nixon Lease Well Number 1 as the source of his irrigation water.¹ The State Engineer finds that Application 52689 proposes to irrigate 10 acres of land with water derived from a petroleum exploration well.

II.

On March 3, 1988, an informal field investigation was conducted by a representative of the Nevada Division of Water

¹ File No. 52689, official records in the office of the State Engineer.

Resources at the Nixon Lease Number 1 well site. One of the findings of this investigation was that the well site is located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T.39N., R.62E., M.D.B.&M. This location differs from that found within Application 52689 which describes the point of diversion as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 28.¹ The State Engineer finds that additional information is required from the applicant to resolve the discrepancy that exists regarding the location of the proposed well site.

III.

At the time of the field investigation, it was observed that the condition and construction of the Nixon Lease Number 1 well violated multiple provisions of the Nevada Revised Statutes, Chapter 534.¹ Accordingly, by State Engineer's Order Number 986, issued on February 10, 1989, the applicant and the RAD Oil Company were ordered to plug and abandon the Nixon Lease Number 1 Well.² The State Engineer finds that no legal appropriation of underground water can occur from the point of diversion as described under Application 52689.

IV.

By certified letter dated May 16, 1996, the applicant was requested by the State Engineer to provide additional information regarding Application 52689. The applicant was also cautioned that a failure to timely respond to this request within 45 days from the date of the letter would result in the denial of Application 52689. A properly endorsed receipt for the certified mailing was received from the applicant on June 14, 1996. To this date, no additional information has been received in the office of the State Engineer regarding this matter.¹ The State Engineer finds that the applicant has failed to respond to the State Engineer's request for additional information, therefore Application 52689 can be considered for denial.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

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

III.

The State Engineer is empowered under the provision of NRS § 533.375 to request such information as will enable him to properly guard the public interest. The applicant was requested by the office of the State Engineer on May 16, 1996, to provide additional information specific to Application 52689 with the understanding that a failure to submit this information in a timely manner would result in the denial of said application. The State Engineer concludes that the applicant has failed to provide sufficient information to adequately guard the public interest, therefore, Application 52689 must be denied.

² State Engineer's Ruling Number 986, official records in the office of the State Engineer.

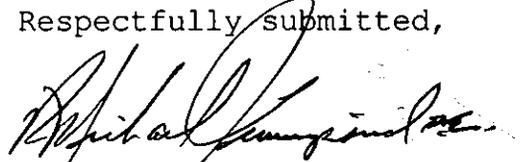
³ NRS Chapters 533 and 534.

⁴ NRS § 533.370(3).

RULING

Application 52689 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 21st day of
January, 2000.