

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

IN THE MATTER OF APPLICATIONS 15725)
AND 16129 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF BLUE POINT SPRING)
WITHIN THE BLACK MOUNTAINS AREA)
HYDROGRAPHIC BASIN (215), CLARK)
COUNTY, NEVADA.)

RULING

5136

GENERAL

I.

Application 15725 was filed on July 6, 1954, by W.H. McDonald to appropriate 1.0 cubic feet per second (cfs) of water from Blue Point Spring. The proposed manner and place of use is for mining and domestic purposes within the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 6, T.18S., R.68E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.18S., R.68E., M.D.B.&M.¹

II.

Application 16129 was filed on February 23, 1955, by W.H. McDonald to appropriate 1.5 cfs of water from Blue Point Spring. The proposed manner and place of use is for the propagation of tropical fish and domestic purposes within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T.18S., R.68E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T.18S., R.68E., M.D.B.&M.²

III.

Application 15725 was timely protested by the U.S. National Park Service on the basis of land management and potential conflicts with existing federal land use.¹

¹ File No. 15725, official records in the Office of the State Engineer.

² File No. 16129, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Applications 15725 and 16129 both described places of use that are located within the boundaries of the Lake Mead National Recreational Area whose lands have been withdrawn from public entry by the federal government. The record of correspondence contained with the files under Application 15725 and 16129 describes the applicant's attempts to gain access and control over the lands comprising the respective places of use. This correspondence spans a period of over twenty-five years with the last letter received in the Office of the State Engineer from the applicant's surviving son on February 26, 1970. In this final letter, Lyle K. McDonald advised the Office of the State Engineer that he was still interested in acquiring both the land and the water requested under the subject applications and that once this task had been accomplished he would submit his Right of Way Agreement with the federal government.¹ The State Engineer finds after a review of the information contained within the files maintained under Applications 15725 and 16129 that no Right of Way Agreement has ever been received in the Office of the State Engineer.

II.

Although a formal transfer of title to Applications 15725 and 16129 from W.H. McDonald to Lyle K. McDonald has never occurred, information provided by the applicant's son indicates that his father, W.H. McDonald is deceased. The previously identified February 26, 1970, letter represents the last written communication received from the McDonald family; however, a telephone conversation did occur between Lyle K. McDonald and the State Engineer's office on September 19, 1994, in which the applicant's son provided a new mailing address. This new address was used to mail Lyle K. McDonald the necessary forms to transfer ownership of the subject applications into his name.^{1,2} Despite

the fact that the applicant's son had been provided the proper means to transfer title to Applications 15725 and 16129, no Report of Conveyance or supporting transfer document have ever been submitted by Lyle K. McDonald.

By letters dated May 30, 1996 and October 28, 1996, the Office of the State Engineer advised Lyle K. McDonald that the time had come to take action on Applications 15725 and 16129. Lyle K. McDonald was instructed to provide answers to four questions relating to the applications with the understanding that his failure to do so in a timely manner would result in the denial of Applications 15725 and 16129. The receipts for both of the certified mailings were returned to the Office of the State Engineer endorsed by Lyle K. McDonald, signifying that he had been properly noticed. To this date, no response to this request for information has been received in the State Engineer's office.^{1,2} The State Engineer finds that with the exception of a single documented telephone conversation, the applicant and his apparent successor in interest have failed over a period in excess of twenty five years to demonstrate a continued interest in completing the project envisioned under Applications 15725 and 16129.

III.

Both of the subject applications request appropriations of water from a point of diversion and places of use that are located upon withdrawn federal land. The utilization of this water and land for the applicant's project hinges upon the acquisition of access and title to these lands from the federal government. While the record of information indicates that the applicant and his successor have attempted this task, there is no indication that it was accomplished; therefore, the State Engineer finds that the applicant does not control the lands comprising the point of diversion and the respective places of use.

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 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.

III.

Applications 15725 and 16129 were filed during 1954 and 1955, respectively, and for various reasons have not passed beyond the application phase. During the many years that have passed since their filings, the applicant and his son have reduced their contact with the Office of the State Engineer to a degree where no written communication has been received from them since 1970. As recently as 1996, the applicant's apparent successor has been requested on two occasions to provide additional information to the State Engineer's office regarding Applications 15725 and 16129. These requests were made with the condition that a failure to timely respond would constitute a lack of interest in completing the applications resulting in their denial. There is no record of significant communications between the McDonald family and the Office of the State Engineer after 1970. The State Engineer concludes that this extended period of inactivity clearly represents a lack of interest in completing the projects

³ NRS chapter 533.

⁴ NRS § 533.370(3).

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envisioned under the applications. The State Engineer concludes the approval of water right applications that the applicant has no intention of completing would threaten to prove detrimental to the public interest.

RULING

Applications 15725 and 16129 are hereby denied on the grounds that their approval 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/MB/jm

Dated this 12th day of
July, 2002.