

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

IN THE MATTER OF APPLICATION 47985)
FILED TO APPROPRIATE THE WATERS)
OF PABLO CREEK LOCATED WITHIN)
THE BIG SMOKY VALLEY (NORTHERN)
PART), (137B), NYE COUNTY, NEVADA.)

RULING

#5305

GENERAL

I.

Application 47985 was filed on April 13, 1984, by Wilbur R. Osterhoudt to appropriate 5.4 cubic feet per second (cfs) of water from Pablo Creek to irrigate 320 acres of land under a Desert Land Entry located within the W½ Section 32, T.10N., R.43E., M.D.B.&M. The point of diversion is described as being located within the NW¼ NW¼ of said Section 32.¹

II.

Proof of Appropriation No. V-0716 was filed on May 28, 1910, by Gertrude C. Millet claiming a priority date of 1879, for the waters of Pablo Creek for irrigation of 117 acres of land located within Homestead Entry Survey No. 44. The point of diversion is not described.² Title to this claim of historic use has been transferred to a variety of owners, with Wilbur R. Osterhault and Jennie Marie Osterhault representing the current owners of record in the Office of the State Engineer.

FINDINGS OF FACT

I.

The applicant states in Item (21), Remarks, under Proof of Appropriation No. V-0716: "During severe winters there is quite a body of water flowing but it does not last long enough to be capable of turning to any use in regular irrigation. At the present time after a rain there are about seven miner's inches flowing and no more."

¹ File No. 47985, official records in the Office of the State Engineer.

² Proof No. V-0716, official records in the Office of the State Engineer.

II.

Application 47985 was filed to support the applicant's Desert Land Entry Application N-39765. By letter dated July 10, 1998, the United States Department of Interior, Bureau of Land Management, notified Ron Osterhoudt for the Estate of Wilbur Osterhoudt, that this Desert Land Entry Application had been cancelled.³

III.

An informal field investigation conducted on May 9, 2003, by staff⁴ of the Division of Water Resources found evidence that no additional water is available from Pablo Creek to support further irrigation use from said stream.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- 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.

Application 47985 requests an appropriation of surface water from a stream source that does not produce a sufficient quantity of water to allow additional irrigation beyond existing uses.

³ Letter filed in File No. 47985, official records in the Office of the State Engineer.

⁴ Steve Walmsley, Staff Engineer III, and Dan Taylor, Engineering Technician III.

⁵ NRS chapter 533.

⁶ NRS § 533.370 (3).

IV.

Application 47985 was filed in support of a Desert Land Entry application. The Desert Land Entry application described under II of Findings has been cancelled in the records of the Bureau of Land Management; therefore, the applicant does not own or control the land described under the place of use of the application and cannot demonstrate the ability to place the water to beneficial use.

V.

The State Engineer concludes that to grant an application to appropriate the public waters for irrigation on lands the applicant does not own or control or where the applicant cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest.

RULING

Application 47985 is hereby denied on the grounds that to grant an application for irrigation purposes on lands that the applicant does not own or control and cannot demonstrate the ability to place the water to beneficial use and where sufficient water does not exist at the source to irrigate the requested acreage, would not be in the public interest.

Respectfully Submitted,


HUGH RICCI, P.E.
State Engineer

HR/SW/jm

Dated this 29th day
of October, 2003.