

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

IN THE MATTER OF APPLICATION 46208)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNNAMED SPRING)
WITHIN THE STEPTOE VALLEY)
HYDROGRAPHIC BASIN (179), WHITE PINE)
COUNTY, NEVADA.)

RULING

5968

GENERAL

I.

Application 46208 was filed on October 8, 1982, by Dave Carter and Guy Tipton, later assigned to David A. Carter and John D. Fleming, to appropriate 2.0 cubic feet per second of water from a source identified upon the application as Unnamed Spring. The proposed manner and place of use is for irrigation and domestic purposes within 760 acres of land located within portions of the S½ of Section 1, the N½ of Section 12 T.24N., R.63E., M.D.B.&M. and Lot 7 of Section 6, in addition to the N½ NW¼ of Section 7, T.24N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SW¼ of said Section 1.¹

II.

The unnamed spring representing the source of water under Application 46208 is also known as the Mill Field Spring and will be referred to as such in this ruling.

FINDINGS OF FACT

I.

The Office of the State Engineer and the United States Geological Survey have for many years collected and recorded spring flow data from numerous sites throughout the state. Most of this information relates either to the state's larger springs, or those that are tributaries to river systems that have been formally adjudicated. A complete record has not been made for the majority of the small, isolated springs that are found throughout the basin and range. A search of the spring flow records maintained within the Office of the State Engineer failed to identify any information specific to the flow of the Mill Field Spring. Given the lack of spring flow data, a decision was

¹ File No. 46208, official records in the Office of the State Engineer.

made to conduct an informal field investigation at the proposed point of diversion requested under Application 46208. The purpose of this visit was to determine the amount of water that the spring was capable of producing.² Once the spring flow has been measured, the State Engineer finds that the suitability of the spring as an irrigation source can be determined.

II.

The guidelines governing the appropriation and allocation of surface water are set forth within the Nevada Revised Statutes (NRS). Under the provisions of NRS § 533.370(5), before an application that requests a new appropriation of water can be considered for approval, it must be determined that there is unappropriated water present at the source. Unappropriated water may be defined as the amount of water that is available for capture once all senior water rights have been fully served, including any customary use of the water by wildlife.³ If the amount of water committed under existing water rights exceeds or equals the amount of sustained flow produced by the source, additional requests for water are generally denied.

Similarly, if the source of surface water is found to be dominated by dry or extremely low flow conditions, its suitability as a reliable source of water for most manners of use is brought into question. Report of Field Investigation No. 1089, states that, "...based on the low observed flow at the Mill field spring, the recommendation is to deny Application 46208." The State Engineer agrees with this recommendation and finds that the Mill Field Spring is incapable of supporting the manner of use requested under Application 46208.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

² Field Investigation Report No. 1089, dated January 15, 2008, official records in the Office of the State Engineer.

³ NRS § 533.367.

⁴ NRS chapter 533.

⁵ NRS § 533.370(5).

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use conflicts with protectable interests in existing domestic wells as set forth in NRS § 533.024;
- D. the proposed use threatens to prove detrimental to the public interest.

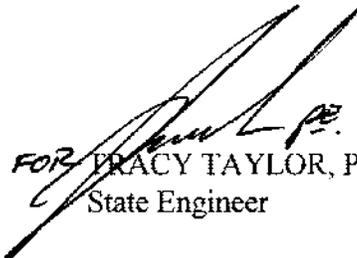
III.

Based upon the recommendation set forth in the field investigation the State Engineer concludes that there is insufficient water to meet the consumptive use requirements for the period of use and the manner of use proposed under Application 46208.

RULING

Application 46208 is hereby denied on the grounds that there is insufficient water available for appropriation and its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,


FOR TRACY TAYLOR, P.E.
State Engineer

TT/MB/jm

Dated this 17th day of

April, 2009