

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

IN THE MATTER OF APPLICATIONS 42339,)
42340, 42341 AND 42342 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE IN ELKO SEGMENT)
GROUNDWATER BASIN, ELKO COUNTY,)
NEVADA.)

RULING

4059

GENERAL

I.

Application 42339 was filed on August 29, 1980, by Progressive Acquisition, Inc. to appropriate 6.0 c.f.s. of water from an underground source for quasi-municipal purposes within Lot 4 (NW $\frac{1}{4}$ NW $\frac{1}{4}$), S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2; portions of the following: SW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 2; N $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, all in T.34N., R.55E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T.34N., R.55E., M.D.B.&M.¹

II.

Application 42340 was filed on August 29, 1980, by Progressive Acquisition, Inc. to appropriate 6.0 c.f.s. of water from an underground source for quasi-municipal purposes within Lot 4 (NW $\frac{1}{4}$ NW $\frac{1}{4}$), S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2; portions of the following: SW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 2; N $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, all in T.34N., R.55E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T.34N., R.55E., M.D.B.&M.¹

III.

Application 42341 was filed on August 29, 1980, by Progressive Acquisition, Inc. to appropriate 6.0 c.f.s. of water from an underground source for quasi-municipal purposes within Lot 4 (NW $\frac{1}{4}$ NW $\frac{1}{4}$), S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2; portions of the following: SW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 2; N $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$

¹ Public record in the office of the State Engineer.

of Section 11, all in T.34N., R.55E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T.34N., R.55E., M.D.B.&M.¹

IV.

Application 42342 was filed on August 29, 1980, by Progressive Acquisition, Inc. to appropriate 6.0 c.f.s. of water from an underground source for quasi-municipal purposes within Lot 4 (NW $\frac{1}{4}$ NW $\frac{1}{4}$), S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2; portions of the following: SW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 2; N $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, all in T.34N., R.55E., M.D.B.&M. The point of diversion is described as being within Lot 4 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 2, T.34N., R.55E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Applications 42339, 42340, 42341 and 42342 were timely protested by the City of Elko through agent James M. Copenhaver on November 26, 1980 on the following grounds:

1. One basis of this Protest is that the proposed wells will interfere with existing wells serving the City of Elko and will result in increased pumping costs and that a reduction in pumping capacity will result as the water table continues to be lowered.

2. Protestant holds vested, permitted and adjudicated water rights of both surface and sub-surface water within the basin which is the source of this application. Granting the application will adversely effect the present water rights of the Protestant.

3. The use applied for exceeds the use of water which can be reasonably and economically used which is limited by NRS 533.060.

4. The notice does not contain the address of the Application as required by NRS 533.060 and is therefore defective.

5. That the proposed application places too many wells too close together which will result in excessive draw down of the sub-surface waters in that immediate area.

6. Protestant further claims that the proposed application will prove detrimental to the public

interests and welfare of the inhabitants of the City of Elko.

7. That the application does not describe the approximate number of persons to be served and the approximate future requirements as required in NRS 533.340 (3).

8. That the proposed well is within 3/4 of a mile from the present City limits and the allowance of such wells would decrease the availability of water in this basin and therefore not permit any future expansion by the City of Elko of municipal water sources in the area.

Wherefore protestant prays that the application be denied.¹

II.

The applicant and agent were notified by certified mail on March 24, 1993, to submit additional information to the State Engineer's Office regarding project status and financing. The return receipt was received from agent Bill Nisbet on April 1, 1993.² The return receipt from applicant Progressive Acquisition, Inc. was returned by the United States Postal Service labelled "Return to Sender. No such Number."³ To date the information requested has not been received from the applicant.⁴

By correspondence dated May 24, 1993, agent William A. Nisbet notified the State Engineer of a possible property owner successor to Progressive Acquisition, Inc. The correspondence suggested after checking with the Elko County Assessor a possible new property owner as Group Management, Inc. and their mailing address.¹

Group Management, Inc. was notified by certified mail on July 7, 1993, to submit additional information to the State Engineer's Office regarding project status and financing. The notice specified that Applications 42339, 42340, 42341 and 42342 would be

² See certified mail Return Receipt No. P 139 029 847.

³ See return certified mail envelope.

⁴ A check of the record of the State Engineer indicates that no information has been received.

denied if no information was received.¹ The return receipt was received from Group Management, Inc. on July 15, 1993.⁵ To date the information requested has not been received from the applicant or successors.⁴

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.⁶

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to guard the public interest properly.⁷

III.

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

- 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.⁸

IV.

The applicant has failed to submit the information requested by the State Engineer's Office. Therefore, sufficient information is not available to the State Engineer to guard the public interest properly.

⁵ See certified mail, Return Receipt No. P 398 484 968.

⁶ NRS Chapters 533 and 534.

⁷ NRS 533.375.

⁸ NRS Chapter 533.370(3).

RULING

Applications 42339, 42340, 42341 and 42342 are hereby denied on the grounds that the applicant has not submitted the information requested by the State Engineer's Office and, therefore, the granting of said applications without the additional information requested would not be in the public interest. No finding is made on the validity of protest submitted by City of Elko.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/DJL/pm

Dated this 16th day of

December, 1993.