

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

IN THE MATTER OF APPLICATION 8924 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF CANYON CREEK WITHIN THE )  
SALMON FALLS CREEK AREA BASIN, )  
ELKO COUNTY, NEVADA. )

RULING  
# 4100

GENERAL

I

Application 8924 was filed on May 28, 1929, by Hattie I. Helsley to appropriate 0.05 cubic feet per second (cfs) of water from Canyon Creek for stockwatering purposes within Lot 3, Section 6, T.45N., R.61E., M.D.B.&M. The point of diversion is described as being within Lot 3, Section 6, T.45N., R.61E., M.D.B.&M.<sup>1</sup>

II.

Application 8924 was timely protested on June 24, 1930, by Steptoe Livestock Company on the following ground:

I.

That protestant has, and for many years last past has had, a subsisting right to water range livestock in sufficient numbers to utilize substantially all that portion of the public range readily available to livestock watering at the said Canyon Creek.

II.

That the granting of the application of said applicant would permit and enable such applicant to water range livestock in such numbers and in such proximity to the said Canyon Creek as to enable said applicant to deprive protestant (the owner of the existing water right) of the grazing use of said portion of the public range and would substantially interfere with the impair the value of protestant's grazing use and protestant's water right.

III.

That the granting of said application would be contrary to the provisions and requirements of an Act of

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<sup>1</sup> Public record in the Office of the State Engineer, under Application 8924.

the Legislature of the State of Nevada, entitled "An Act Relating to the Use of Water for Watering Livestock", etc., which became a law April 1, 1925 (Stats. of Nev., 1925, p. 348).

IV.

That protestant has a vested and subsisting right to the use of the waters of certain springs for stockwatering purposes, within three miles of the said proposed point of diversion and the said proposed place of use by the said applicant, and has a subsisting right to water range livestock at said springs within three miles of said applicant's proposed place of use as aforesaid, in sufficient numbers to utilize substantially all that portion of the public range readily available to livestock watering at such place and places.

Wherefore protestant prays that the application be denied and that the use of water herein claimed by protestant be confirmed and that an order be entered establishing said right and for such other relief as the State Engineer deems just and proper.<sup>1</sup>

FINDINGS OF FACT

I.

On January 10, 1994, the Office of the State Engineer sent correspondence to the listed address for protestant, Steptoe Livestock Company, c/o Badt and Dysart, inquiring if the protestant still wanted to pursue the protest to Application 8924. A copy of this correspondence was also sent to the listed address for applicant Hattie I. Helsley. Both letters were returned by the United States Postal Service labelled "Insufficient Address."<sup>2</sup> To date no response has been received by the protestant or applicant.<sup>3</sup>

II.

On February 11, 1994, the Office of the State Engineer sent certified correspondence to the listed addresses for applicant, Hattie I. Helsley or agents, J. H. White, Morley Griswold, Milton I. Reinhart and Peggy O'Neil, inquiring if the applicant still

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<sup>2</sup> See non-certified mail, returned envelopes on file in the office of the State Engineer.

<sup>3</sup> A check of the record of the State Engineer indicates that no information has been received.

wanted to pursue the permitting process for Application 8924.<sup>1</sup> Additionally, the applicant was requested to advise the office on the current number and kind of animals to be grazed. Both certified letters were returned by the United States Postal Service labelled "Returned for Better Address" and "Insufficient Address," respectively.<sup>4</sup> To date no response has been received from the applicant or agents.<sup>3</sup>

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.<sup>5</sup>

#### 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.<sup>6</sup>

#### 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.<sup>7</sup>

#### 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.

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<sup>4</sup> See certified mail returned envelopes on file in the Office of the State Engineer, return Receipt No's. P 319 852 024 and P 319 852 025.

<sup>5</sup> NRS Chapters 533 and 534.

<sup>6</sup> NRS 533.375.

<sup>7</sup> NRS 533.370(3).

RULING

Application 8924 is 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 application without the additional information requested would not be in the public interest. No finding is made on the validity of the protest submitted by Steptoe Livestock Company.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SR/pm

Dated this 29th day of  
March, 1994.