

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

IN THE MATTER OF APPLICATION 19825)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF TRI SPRING WITHIN THE)
AMARGOSA DESERT HYDROGRAPHIC BASIN)
(230), NYE COUNTY, NEVADA.)

RULING

5028

GENERAL

I.

Application 19825 was filed on May 4, 1961, by Norine B. Harris to appropriate 2.0 cubic feet per second of water from Tri Spring. The proposed manner and place of use is for irrigation and domestic purposes within 160 acres of land that is described as being within the W $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, and the W $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, both within T.17S., R.50E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 21.¹

II.

Application 19825 was timely protested by Merrill H. Peterson on the following grounds as summarized:¹

- A. the proposed point of diversion may be an existing surface water source known as Cold Spring.
- B. the approval of Application 19825 would adversely affect the protestant's senior existing water right Permit 4050, Certificate 762 which was filed to appropriate the water from Cold Spring.

¹ File No. 19825, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

Every water right application that is submitted to the office of the State Engineer in its proper and complete form contains the name of the party requesting the appropriation of water. Once the application is filed in the office of the State Engineer, ownership of the water right application will remain in the name of the original applicant unless the applicant or a successor in interest initiates and completes an assignment of title. It was determined through an examination of the records of the State Engineer's office that no attempt has been made by any party or possible successor in interest to modify the ownership of Application 19825; therefore, the State Engineer finds that the original applicant, Norine B. Harris, remains the owner of record of Application 19825.¹

II.

The applicant is also responsible for advising the office of the State Engineer of any changes that may occur in his or her mailing address. The submittal of address changes as they occur enables the State Engineer's office to correctly notify the proper party of matters relating to the applicant's water right filing. The most recent address associated with Norine B. Harris was provided by the Nye County Assessor's office at the request of the office of the State Engineer on March 19, 1973. No additional information relating to changes in the applicant's address has been submitted since that date; therefore, the State Engineer finds that the applicant's address was last revised almost twenty-seven years ago.¹

III.

Any interested party may within thirty days from the date of the last publication of the notice of application, file with the State Engineer a written protest against the granting of the application.² Once the office of the State Engineer accepts a protest, the permitting process is delayed until the protest issues are resolved. On October 5, 1962, Merrill H. Peterson timely filed a protest against the granting of Application 19825. One of the issues brought forth in the protest is the contention that a senior existing water right has been issued on Tri Spring which the protestant claims is also known as Cold Spring. Correspondence found within the application file indicates that there was some uncertainty as to the actual location of Tri Spring and that the issues of its actual location and any existing senior water rights were never completely resolved. The applicant and her agent were requested by the office of the State Engineer in 1962 and 1963 to provide additional information relating to the actual location of Tri Spring. Responses were received which contained information that was insufficient to answer the question of the springs true location. The State Engineer finds that there is insufficient information contained within the application file to resolve the protest to Application 19825.

IV.

Because of the time which had passed since the filing of Application 19825, the applicant and the protestant were requested in 1969 to provide the office of the State Engineer with written evidence of a continued interest in pursuing their respective actions. A response was received from the applicant on August 6, 1969, which indicated a continued interest in completing the

² NRS § 533.365.

subject application. Correspondence received from the original protestant on August 13, 1969, indicated that he had transferred his interests to a second party. This successor in interest notified the office of the State Engineer by letter dated March 14, 1973, of his intent to maintain Merrill H. Peterson's original protest.¹ With the exception of a March 19, 1973, exchange of correspondence between the offices of the State Engineer and the Nye County Assessor, no additional information relating to a continued desire to pursue Application 19825 or its associated protest has been received in the office of the State Engineer. The State Engineer finds that the applicant and protestant have for a period that exceeds twenty-seven years failed to contact the office of the State Engineer in the matter of Application 19825.

V.

By certified letter dated December 7, 2000, Norine B. Harris was requested at her address of record to provide the office of the State Engineer with written evidence of her continued interest in pursuing the original intent of Application 19825. The applicant was allowed sixty days to respond to this request with the caution that a failure to do so within that time period would result in the denial of Application 19825. The envelope containing the December 7, 2000, notice was returned to the office of the State Engineer stamped "Attempted-Not Known" by the United States Postal Service. To this date, no information relevant to this matter has been received in the office of the State Engineer. The State Engineer finds that the applicant's failure to respond demonstrates a continued lack of interest in pursuing Application 19825.

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 conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

Application 19825 and its associated protest were filed in the office of the State Engineer more than 29 years ago. With the exception of an exchange of correspondence between the applicant and the office of the State Engineer during the late 1960's, no further evidence of a continued interest in pursuing Application 19825 has been received from the applicant. A final request for information was sent to the applicant on December 7, 2000, which also failed to generate a response. The State Engineer concludes that the applicant's failure over a period of twenty-seven years to provide evidence of a continued interest in pursuing Application 19825 allows said application to be considered for denial.

³ NRS chapter 533.

⁴ NRS § 533.370(3).

IV.

The State Engineer concludes that the approval of a water right application in which the applicant has not indicated an intent to pursue would threaten to prove detrimental to the public interest.

RULING

Application 19825 is hereby denied on the grounds that the applicant has failed to demonstrate a continued interest in completing said application and that its 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/MDB/hf

Dated this 29th day of

May, 2001.