

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

IN THE MATTER OF APPLICATION 12803)
FILED TO APPROPRIATE THE UNDERGROUND)
WATERS WITHIN THE CALIFORNIA WASH)
HYDROGRAPHIC BASIN (218), CLARK)
COUNTY, NEVADA.)

RULING

5159

GENERAL

I.

Application 12803 was filed on January 25, 1949, by Hidden Valley Ranch (Kenneth Searles) to appropriate 5.0 cubic feet per second of underground water in the California Wash Hydrographic Basin to irrigate 640 acres of land described as the S $\frac{1}{2}$ SW $\frac{1}{4}$ and a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, the SE $\frac{1}{4}$ SW $\frac{1}{4}$, the S $\frac{1}{2}$ SE $\frac{1}{4}$ and a portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4, the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 5, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 8, the N $\frac{1}{2}$ NW $\frac{1}{4}$ and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 9, all within T.15S., R.66E., M.D.B.&M.¹ The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 6, T.15S., R.66E., M.D.B.&M.

In the remarks section of the application it is indicated that "this application is filed for the purpose of appropriating water as well as to relieve the area designated as the place of use of the water log which is approximately 7 feet below the surface, and in no way effect [sic] the Muddy River which is situated nearby."

II.

Application 12803 was timely protested by the Muddy Valley Irrigation Company ("MVIC") on the following grounds.¹

1. The application has the possibility of drawing or diverting waters of the Muddy River that are fully appropriated under the Muddy River Decree by those downstream of the proposed point of diversion.

¹ File No. 12803, official records of the Office of the State Engineer.

2. Applications 12244, 12458, 12459, 11961 and 11960 are pending and proposed applications are anticipated or already under way by other parties.
3. Reasonable development of the proposed Bureau of Reclamation program now under investigation might be jeopardized by a probable reduced flow of the Muddy River.

III.

By letter dated April 3, 2002, the Southern Nevada Water Authority ("SNWA") requested that the State Engineer act on Application 12803 by denying the application.¹ The SNWA indicated that pursuant to a settlement agreement that it has become the real party in interest as to the Application, and agrees that the Application should be denied because the proposed diversion of water would result in the direct diversion of water from the fully appropriated Muddy River.

FINDINGS OF FACT

I.

The State Engineer initially described and designated the California Wash groundwater basin on April 24, 1990, under the provisions of NRS § 534.030, as a basin in need of administration.² Pursuant to the State Engineer's designation Order, the irrigation of land using ground water is not considered a preferred use of the limited resource and applications to appropriate ground water for irrigation will be denied. The State Engineer finds that the proposed point of diversion and place of use are within the designated area and Application 12803 is filed for irrigation purposes.

II.

In 1949, the original applicant, Kenneth Searles, had a well drilled at the proposed point of diversion under Application 12803. That well log indicates that from 4 to 7 feet the composition of the materials was sand and clay, from 7 to 91 feet

² State Engineer's Order No. 1026, dated April 24, 1990, official records in the Office of the State Engineer.

the composition was quicksand, and from 91 to 292 feet red clay with small pockets of pea gravel, and that standing water was located 12 feet from the surface of the ground. The State Engineer finds the original application indicates that the appropriation was to remove water from a water-logged area and to use it for irrigation.

III.

From the 1950's through the 1990's no interest was expressed in Application 12803. Further, the State Engineer believes that the applicant Kenneth Searles is deceased and there is nothing in the records of the State Engineer indicating that Application 12803 was conveyed prior to or at his death. Years ago, when the Office of the State Engineer was purging old applications for which no interest had been expressed in decades, somehow this application was missed in that purge process. Therefore, by letter dated October 23, 1996, the applicant was informed that the State Engineer was in the process of purging the files of older applications and that if the applicant was no longer interested in the application it would be appreciated if it would be withdrawn. The certified mailing receipts to the applicant and his agent for the October 23, 1996, letters were returned by the U.S. Postal Service as undeliverable. From the nearly 50 year lapse of any expression of interest in Application 12803, and the failure of the applicant to maintain a current address up to the date of the 1996 letter, the State Engineer finds there was no demonstrated interest in the pursuit of Application 12803, and it can be considered for denial, and should have been denied after there was no response to the 1996 letter of inquiry.

IV.

Recent interest expressed in Application 12803 was not for the purpose for which the application was filed, but merely in the context of an entity attempting to find an old application by which it could acquire a senior priority date, and then attempt to change it to a new point of diversion, manner of use and place of

use.³ The State Engineer finds the change application which sought to change any water that may have been authorized for appropriation under Application 12803 was withdrawn. The State Engineer finds that after nearly 50 years of no interest being expressed by the applicant in pursuing the application for the purpose for which it was sought the application can be considered for denial.

CONCLUSIONS OF LAW

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 a permit under an application to appropriate the public waters where:⁵

- 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.

³ File No. 66930, official records in the Office of the State Engineer.

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.370(3).

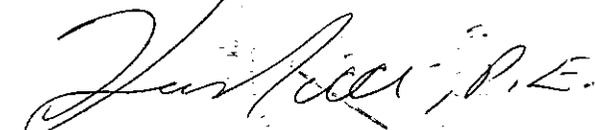
III.

The State Engineer concludes that it would threaten to prove detrimental to the public interest to approve an application for which there is no expressed interest in pursuing.

RULING

Application 12803 is hereby denied on the grounds that granting said application 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/SJT/jm

Dated this 3rd day of
October, 2002.