

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

IN THE MATTER OF APPLICATIONS)
42648, 42649, AND 42650 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
FROM VARIOUS SURFACE WATER)
SOURCES WITHIN THE BUFFALO)
VALLEY HYDROGRAPHIC BASIN)
(131), LANDER COUNTY, NEVADA.)

RULING

5200

GENERAL

I.

Application 42648 was filed on October 15, 1980, in the name of Louie & Eddie Venturacci to appropriate 0.5 cubic feet per second of water from Unnamed Spring (Mill Canyon) for domestic and stockwater purposes. The place of use is within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26; S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27; SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22; S $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21; within T.32N., R.42E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.32N., R.42E., M.D.B.&M.¹

II.

Application 42649 was filed on October 15, 1980, in the name of Louie & Eddie Venturacci to appropriate 0.5 cubic feet per second of water from Unnamed Spring (Trenton Canyon) for domestic and stockwater purposes. The place of use is within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15; S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 16; NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21; NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 22; all in T.32N., R.42E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T.32N., R.42E., M.D.B.&M.²

III.

Application 42650 was filed on October 15, 1980, in the name of Louie & Eddie Venturacci to appropriate 0.5 cubic feet per second of water from Unnamed Spring (Rocky Canyon) for domestic and stockwater purposes. The place of use is within the

¹ File No. 42648, official records in the Office of the State Engineer.

² File No. 42649, official records in the Office of the State Engineer.

E $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23; NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24; N $\frac{1}{2}$ NW $\frac{1}{4}$ Section 26; all in T.31N., R.42E., MDB&M. The point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.31N., R.42E., M.D.B.&M.³

IV.

Application 42648 was timely protested by the U.S.D.I. Bureau of Land Management (BLM) on the following grounds:

This spring was developed on public lands with federal funds by the Bureau of Land Management and all values to be incurred to the land will be in the name of the U.S. Government.

WHEREFORE protestant prays that the application be Denied.¹

V.

Application 42649 was timely protested by the BLM on the following grounds:

The water is not available for appropriation under state law because it is a public water reserve. The lands contained in this public water reserve were withdrawn by Executive Order 107 of April 17, 1926. (43 C.F.R. 2311)

WHEREFORE protestant prays that the application be Denied.²

IV.

Application 42650 was timely protested by the BLM on the following grounds:

This spring was developed on public lands with federal funds by the Bureau of Land Management and all values to be incurred to the land will be in the name of the U.S. Government.

WHEREFORE protestant prays that the application be Denied.³

FINDINGS OF FACT

I.

Under the provisions of NRS § 533.503, the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock upon the public land

³ File No. 42650, official records in the Office of the State Engineer.

unless the applicant for the permit is legally entitled to place livestock on the public lands for which the permit is sought.⁴ On December 12, 2002, the BLM Battle Mountain field office informed the State Engineer that the applicants do not have or control any grazing permits or leases and are not the authorized range users for the allotment where the applications are located.^{1,2,3} The State Engineer finds that the applicants are not legally entitled to place livestock on the public lands described under applications 42648, 42649, and 42650. The State Engineer finds to approve permits for stockwatering when the applicants are not the authorized to use the lands for grazing would threaten to prove detrimental to the public interest.

II.

The applicants were notified by certified mail dated August 20, 2002, to advise this office in writing if they were interested in pursuing Applications 42648, 42649, and 42650. The applicants were warned that failure to respond within 30 days would result in denial of the applications. The certified mailing was returned by the U.S. Postal Service stamped "Returned To Sender, Not Deliverable As Addressed, Attempted Not Known".¹ To date, no information on this matter has been submitted to the Office of the State Engineer. The State Engineer finds that the applicants were properly notified of the request for additional information regarding interest in pursuing Applications 42648, 42649, and 42650 and failed to respond.

III.

The State Engineer finds that it is the responsibility of the applicants, or their successor in interest, to keep this office informed of a current mailing address.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

⁴ NRS § 533.503 (1).

⁵ NRS chapter 533.

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.⁶

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁷

- 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.

IV.

The State Engineer concludes that the applicants are not the current range user; therefore, the approval of applications 42648, 42649, and 42650 would threaten to prove detrimental to the public interest.

V.

The applicants were properly notified of the requirement for additional information concerning their interest in this application and have failed to submit the information to the Office of the State Engineer. The State Engineer concludes that the failure to respond affirms the applicant's lack of interest in pursuing Applications 42648, 42649, and 42650.

RULING

Applications 42648, 42649, and 42650 are hereby denied on the grounds that the applicants are not the current range users and have not submitted information requested

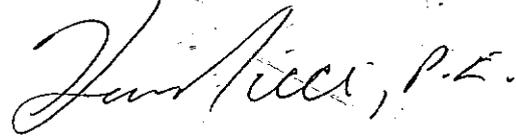
⁶ NRS § 533.375.

⁷ NRS § 533.370(3).

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by the Office of the State Engineer; thus, the granting of these applications would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 10th day of
January, 2003.