

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

IN THE MATTER OF APPLICATION 13173)
FILED TO APPROPRIATE THE PUBLIC)
WATERS FROM AN UNDERGROUND)
SOURCE WITHIN THE PAHROC VALLEY)
HYDROGRAPHIC BASIN (208), NYE)
COUNTY, NEVADA.)

RULING

5207

GENERAL

I.

Application 13173 was filed on November 23, 1949, by Clair Whipple to appropriate 0.1 cubic feet per second of water from Esplin Well for stockwatering purposes. The place of use is within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, T.3N., R.62E., MDB&M. The point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 8.¹

II.

Application 13173 was timely protested by John A. Magnuson & Sons on the following grounds:

That the granting of said above referred to application would impair the value of the existing rights of protestant in that protestants now are the holders of a legal permit to graze upon the public domain serviced by the waters of said well; that the granting of said permit would be detrimental to the public welfare in that it would be granting a water permit to the applicant in an area where he now holds no grazing rights or privileges; that protestants now are the successors in interest of the individuals who originally bore the expense of digging said well and have by mesne conveyances acquired all of the right, title and interest in and to said well.

WHEREFORE protestant prays that the application be denied.¹

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

unless the applicant for the permit is legally entitled to place livestock on the public lands for which the permit is sought.² By letter dated February 19, 1985, the U.S. Bureau of Land Management (BLM) informed the State Engineer that the current grazing permittee is Chester Johnson of the Sunnyside Ranch.¹ The State Engineer finds that the applicant is not legally entitled to place livestock on the public lands described under Application 13173. The State Engineer finds to approve permits for stockwatering when the applicant is not authorized to use the public lands for grazing would threaten to prove detrimental to the public interest.

II.

The applicant was notified by certified mail dated November 25, 2002, to advise this office in writing if they were interested in pursuing Application 13173. The applicant was warned that failure to respond within 30 days would result in denial of the application. The certified mailing was returned to the Office of the State Engineer by the U.S. Postal Service stamped "Returned To Sender".¹ To date, no information on this matter has been submitted to the State Engineer's Office. The State Engineer finds that the applicant was properly notified of the request for additional information regarding Application 13173 and failed to respond.

III.

The State Engineer finds that it is the responsibility of the applicant, or its 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.³

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.⁴

¹ File No. 13173, official records in the Office of the State Engineer.

² NRS § 533.503 (1).

³ NRS chapters 533 and 534.

⁴ NRS § 533.375.

III.

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

IV.

The State Engineer concludes that the applicant is not the current range user; therefore, the approval of application 13173 would threaten to prove detrimental to the public interest.

V.

The applicant was properly notified of the requirement for additional information concerning interest in this application and has failed to submit such information to the State Engineer's Office. The State Engineer concludes that the failure to respond affirms the applicant's lack of interest in pursuing Application 13173.

RULING

Application 13173 is hereby denied on the grounds that the applicant is not the current range user and has not submitted information requested by the State Engineer's Office; thus, the granting of this 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/TW/jm

Dated this 6th day of
February, 2003.

⁵ NRS § 533.370(3).