

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

IN THE MATTER OF APPLICATION 50041)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF CHOKECHERRY SPRING)
WITHIN THE SPRING VALLEY)
HYDROGRAPHIC BASIN (201), LINCOLN)
COUNTY, NEVADA.)

RULING

5230

GENERAL

I.

Application 50041 was filed on July 25, 1986, by Richard Flinspach to appropriate 0.06 cubic feet per second of water from Chokecherry Spring for stockwatering purposes. The proposed place of use is within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21, T.31S., R.19W., S.L.B.&M. The proposed point of diversion is described as being located within Lot 1 of Section 5, T.2N., R.71E., M.D.B.&M.¹

II.

Application 50041 was timely protested by the U.S. Bureau of Land Management on the following grounds:¹

1. Choke Cherry Springs has been claimed by the U.S. Government as a Public Water Reserve pursuant to Public Water Reserve 107, by Executive Order of April 17, 1926.
2. Mr. Flinspach cannot make beneficial use of these waters in the state of Nevada because he is not a permittee in the Ely District of the Bureau of Land Management. According to Application 50041 any beneficial use would be made in the State of Utah.
3. Diverting the water from the State of Nevada to the State of Utah may be in violation of State Law, Nevada Title 48 533.520.1.

FINDINGS OF FACT

I.

The applicant and his agent were notified by certified mail dated November 25, 2002, to advise this office in writing if the applicant was interested in pursuing Application 50041. The applicant and his agent were warned that failure to respond

¹ File No. 50041, official records in the Office of the State Engineer.

within 60 days would result in denial of the application. The certified letter to the applicant was returned by the U. S. Postal Service stamped "Returned To Sender, Not Deliverable as Addressed, Unable to Forward".¹ The letter to the agent was delivered on November 27, 2002, in Pioche, Nevada.² To date, no information on this matter has been submitted to the State Engineer's office. The State Engineer finds that the applicant and his agent were properly notified of the request for additional information regarding Application 50041.

II.

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

III.

The State Engineer finds that there has been no correspondence from the applicant or his agent regarding Application 50041 for at least 16 years.¹

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

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

² File No. 50041, U.S. Postal Service Shipment History, official records in the Office of the State Engineer.

³ NRS chapter 533.

⁴ NRS § 533.375.

⁵ NRS § 533.370(3).

- D. the proposed use or change threatens to prove detrimental to the public interest.

IV.

The applicant and his agent were properly notified of the requirement for additional information concerning this application and have failed to submit the information to the State Engineer's office. The State Engineer concludes that the failure to express any interest in this application for over 16 years and failure to maintain a current address demonstrates the applicant's lack of interest in pursuing Application 50041. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue permits under an application for which no interest is expressed.

RULING

Application 50041 is hereby denied on the grounds its issuance 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 5th day of
May, 2003.