

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

IN THE MATTER OF APPLICATION)
61079 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE OASIS VALLEY)
HYDROGRAPHIC BASIN (228), NYE)
COUNTY, NEVADA.)

RULING

5711

GENERAL

I.

Application 61079 was filed on March 28, 1995, by James M. Matheny to appropriate 0.45 cubic feet per second of water from an underground source. The proposed manner and place of use are described on the application as being for irrigation purposes within 40.0 acres of land that are located within portions of the SE¼ of Section 33, T.11S., R.47E., M.D.B.&M. The proposed point of diversion is stated as being located within the NE¼ SE¼ of said Section 33.¹

FINDINGS OF FACT

I.

Application 61079 was timely protested by the Beatty Water and Sanitation District and the United States Department of the Interior, National Park Service, on grounds that will not be considered in this ruling.¹

II.

Nevada Revised Statute § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to a water right application. The State Engineer finds that in the case of Application 61079, there is no need to supplement the records of the Office of the State Engineer with testimony and evidence relating to this application and its associated protests.

¹ File No. 61079, official records in the Office of the State Engineer.

III.

The Office of the State Engineer is currently engaged in a program that is designed to reduce the number of pending water right applications. Many of these applications have been pending for several years, so prior to any action by the State Engineer, it must be determined if the applicant is still interested in pursuing the application to its final stage. Typically a certified letter of interest is sent to the owner of record at the address indicated within the application file. Since the State Engineer's office is totally dependent upon the public to provide any changes in ownership or contact information, the letters are always sent to the address recorded within the specific application file. In the case of Application 61079, the ownership and contact information submitted with the original application form, remains unchanged; therefore, any initial correspondence to the Applicant will be addressed to James M. Matheny, P.O. Box 417, Beatty, Nevada. Accordingly, by certified letter dated December 20, 2004, the Applicant was requested to provide the Office of the State Engineer with a written assessment of his continued interest in the application. The Applicant was also advised that if a written response was not received within sixty days from the date of the letter, Application 61079 would be denied. This attempt to contact the Applicant was returned by the United States Postal Service, with the notation, "Return to Sender," attached to the original envelope. A forwarding address was also noted on the envelope, which was used in the second attempt to notify the Applicant. A receipt for the second mailing to the Applicant's forwarding address in Michigan was received in the State Engineer's office under the signature of Victoria Matheny.¹ The return of the signed receipt signifies, that the Applicant has been properly noticed at his most recent address of record. The State Engineer finds that the Applicant's failure to respond to this request qualifies Application 61079 for denial.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³

- 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.

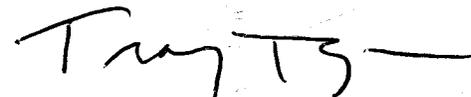
III.

The State Engineer concludes that the approval of a water right application that the applicant has no further interest in completing would threaten to prove detrimental to the public interest.

RULING

Application 61079 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully Submitted



TRACY TAYLOR, P.E.
State Engineer

TT/MDB/lt

Dated this 26th day of
January, 2007.

² NRS chapters 533 and 534.

³ NRS § 533.370(5).