

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

IN THE MATTER OF APPLICATION 62860)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF BIRD SPRING WITHIN THE)
STEPTOE VALLEY HYDROGRAPHIC BASIN)
(179), WHITE PINE COUNTY, NEVADA)

RULING

#5864

GENERAL

I.

Application 62860 was filed on February 14, 1997, by the U.S. Government – Forest Service (USFS) to appropriate 0.004 cubic feet per second of water from Bird Spring. The proposed manner of use and place of use is for recreational (domestic) purposes within portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.19N., R.65E., M.D.B.&M., in addition to the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T.18N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 3.¹

FINDINGS OF FACT

I.

Application 62860 was filed to provide water to the Bird Creek picnic area that is operated and maintained by the USFS. An informal field investigation was conducted at the proposed point of diversion by personnel from the Nevada Division of Water Resources on April 8, 1999. During this on site inspection it was confirmed that water from Bird Spring was being diverted to service the picnic area. It was the recommendation of the investigating parties that Application 62860 be approved subject to existing water rights on Bird Spring, which is a tributary source of water for Bird Creek.¹ An office memo that is dated October 4, 2001, confirmed that the USFS had for several years been appropriating water from Bird Spring to service the camp ground. The memo also states that it was the intention of the USFS to eventually construct a well to service the camp ground. A review of the records of the Office of the State Engineer confirms that a permit was issued to the USFS for a well located within the place of use described under Application 62860. Permit 66425, which was approved on December 7, 2000, states in its remark section that, “Water is for domestic use in the Bird Creek Picnic Area.”

¹ File No. 62860, official records in the office of the State Engineer.

The Proof of Completion for this permit, which indicates the well has been properly constructed and was capable of operation, was timely filed in the office of the State Engineer on February 7, 2003.² Having secured an underground source of water for the Bird Creek camp ground, the State Engineer finds that there is no longer a need to appropriate water for a similar manner of use from Bird Spring.

II.

The October 4, 2001, memo also contained a statement that indicated that the USFS would withdraw Application 62860 upon activation of the well. Having received the Proof of Completion for this permit, the USFS was requested by letter of April 13, 2007, to withdraw Application 62860. The USFS was allowed thirty days to accomplish this task, with the condition that Application 62860 would be denied if the withdrawal was not completed in a timely manner. In accordance with the standard office procedure, the letter to the USFS was mailed to its address of record in Elko, Nevada, by certified mail. Subsequently, a signed receipt for the letter was received in the State Engineer's office on April 18, 2007.¹

The State Engineer finds that to this date, no correspondence regarding Application 62860 has been received by the State Engineer's office.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

² File No. 66425, official records in the office of the State Engineer.

³ NRS chapter 533.

⁴ NRS § 533.370(5).

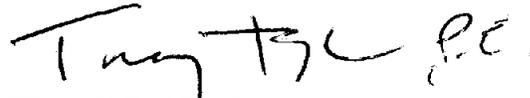
III.

It has been found that the need to appropriate surface water for the place of use described under Application 62860 no longer exists. Based upon this finding, the Applicant was requested to withdraw Application 62860, but failed to accomplish this task. Under this set of circumstances, the State Engineer concludes that the approval of Application 62860 would prove detrimental to the public interest.

RULING

Application 62860 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/jm

Dated this 27th day of
June, 2008.