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

IN THE MATTER OF APPLICATION) 56602 FILED TO APPROPRIATE THE) PUBLIC WATERS OF CARPENTER) SPRING WITHIN THE FISH LAKE) VALLEY HYDROGRAPHIC BASIN (117),) ESMERALDA, COUNTY, NEVADA.)	**RULING** **#6075**

GENERAL

I.

Application 56602 was filed on July 29, 1991, by Vernon H. and Katina Cook to appropriate 0.10 cubic feet per second (cfs) from Carpenter Spring for mining, milling and domestic purposes within the NW¼ SW¼ of Section 26, T.6S., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of said Section 26.[1]

FINDINGS OF FACT

I.

Before an application to appropriate water can be considered for approval, it must be determined that there is sufficient unappropriated water available at the source and that the appropriation will not conflict with existing water rights. A field investigation was conducted by the Office of the State Engineer to investigate the proposed point of diversion described in the application as Carpenter Spring. The investigation notes that there is an existing claim of vested water right on the source, V-04821. Claim of vested right V-04821, having a priority date of 1890, was filed by Jack and Joan Vogt and was later assigned to the Denver Square Trust, to appropriate 0.04 cfs of water from Carpenter Spring to water 1,000 head of cattle and 50 horses. At the time of the investigation, it was noted that there was no measurable flow from the spring, but there were indications of use by livestock. The investigation concluded by recommending denial of Application 56602.[2]

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[1] File No. 56602, official records in the Office of the State Engineer.
[2] Report of Field Investigation, July 10, 1998, File No. 56602, official records in the Office of the State Engineer.

The State Engineer finds that there is insufficient water at the source to support Application 56602 and the approval of additional appropriations of water from Carpenter Spring would conflict with existing water rights.

II.

On September 3, 1991, the Office of the State Engineer sent notice to the Applicants requesting additional information on their mining and milling operation. On May 6, 1998, a certified letter was sent to the Applicants again requesting additional information. To date, no response has been received from the Applicants to either letter. In addition, the second certified letter was returned by the U.S. Postal Service as undeliverable.[1]

The State Engineer finds that the Applicants were properly notified of the request for additional information regarding their interest in pursuing Application 56602 and failed to respond.

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 an application to appropriate the public waters 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.

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[3] NRS Chapter 533.
[4] NRS § 533.375.
[5] NRS § 533.370(5).

IV.

Application 56602 requests an additional appropriation of water from Carpenter Spring. A field investigation found there was an existing water right on the source for livestock purposes and there was no measurable flow at the spring. The State Engineer concludes that there is no unappropriated water at the proposed source beyond the water necessary to satisfy the existing claim of vested right and the approval of Application 56602 would conflict with this existing right.

V.

The Applicants were properly notified of the requirement for additional information and have failed to submit the information to the State Engineer's Office. The State Engineer concludes that the failure to submit the requested information demonstrates the Applicants' lack of interest in pursuing Application 56602. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

RULING

Application 56602 is hereby denied on the grounds that there is no unappropriated water at the proposed source and its issuance would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,

JASON KING, P.E.
State Engineer

Dated this 6th day of

December, 2010.