

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

IN THE MATTER OF APPLICATION 44206)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE OWYHEE RIVER)
AREA HYDROGRAPHIC BASIN (37),)
ELKO COUNTY, NEVADA.)

RULING

#6244

GENERAL

I.

Application 44206 was filed on July 29, 1981, by Don or Norma Rizzi, later assigned to the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, to appropriate 2.0 cubic feet per second of water from an underground source for irrigation purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, T.45N., R.54E., M.D.B.&M. The proposed place of use is described as being located within portions of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, portions of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, and portions of the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T.45N., R.54E., M.D.B.&M.¹

FINDINGS OF FACT

I.

The remarks section of the application indicates that the source of water is a uranium exploration well. Item 8 of the application also describes the proposed works as flowing well water that runs into Alleghany Creek, and Item 12 indicates that the water would be used to supplement existing water rights at the Applicant's downstream property.¹

The borehole was brought to the attention of the public land manager, U.S. Forest Service (USFS), in order to investigate this site and provide the Office of the State Engineer with additional information. According to the research done by the USFS, the borehole punctured an artesian strata and as a result began flowing water at the surface at a rate of about 50-60 gpm. Three attempts were made to plug the borehole, but the well driller was unsuccessful.¹

¹ File No. 44206, official records in the Office of the State Engineer.

On July 29, 1981, the local rancher/farmer filed Application 44206 to appropriate the water. In 1996, in response to a request for information from the Office of the State Engineer, the Applicant stated in a letter that there was not enough flow from the borehole for irrigation.¹

In 2011, the USFS conducted a field investigation. The area now resembles a spring area with water flowing from the vicinity of the borehole at about 10-15 gpm. The water was observed flowing about 200 yards to the southwest and is ponding in a riparian area that has been created by this water flow over the last 30 years. No water was observed flowing into Alleghany Creek, which is an additional 400 yards to the southwest. The riparian area the water has created has substantial vegetation, and it is believed that the Columbia Spotted Frog may be utilizing this established ecosystem.¹

On March 5, 2013, the USFS requested that a permanent waiver be granted on the belief that it would be virtually impossible to properly plug this borehole after 30-plus years, the flow rate is only about 5-15 gpm, there is no evidence of any impact to Alleghany Creek, and the presence of a wildlife dependent ecosystem that has been established that may include designated sensitive species. On March 29, 2013, the plugging waiver was granted.¹

The application seeks to divert water from the borehole north of Alleghany Creek after flowing into the creek and then being diverted from the creek with commingled creek water to the place of use south of the creek. The State Engineer finds that the water source does not flow into Alleghany Creek, and therefore does not commingle with the creek water enabling it to be used for supplemental irrigation purposes as described in Application 44206.

II.

A letter was sent by the Division of Water Resources to the Applicant on June 11, 2013, by certified mail. The signed mail receipt was received in the Office of the State Engineer on June 17, 2013. This letter requested information from the Applicant as to whether they intend to pursue Application 44206 considering the current conditions at the point of diversion. This letter advised the Applicant that failure to respond within 30 days from the date of the letter may be taken as evidence that they are no longer interested in pursuing the application. No response was received from the Applicant; therefore, the State Engineer finds that there is no interest by the Applicant in pursuing Application 44206.

CONCLUSIONS

I.

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

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.³

III.

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 or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectable 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 approval of Application 44206 would conflict with existing rights of Alleghany Creek, because the low flow rate does not allow for commingling with the waters of Alleghany Creek for the supplemental irrigation purposes requested in the application.

V.

The State Engineer concludes that approval of Application 44206 when the Applicant is not interested in pursuing the application would threaten to prove detrimental to the public interest.

² NRS Chapters 533 and 534.

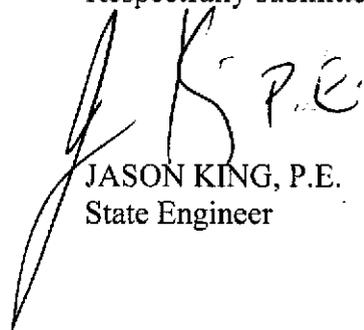
³ NRS § 533.375.

⁴ NRS § 533.370 (2).

RULING

Application 44206 is hereby denied on the grounds that its approval would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. King P.E.', is written over the typed name and title.

JASON KING, P.E.
State Engineer

Dated this 5th day of
November, 2013.