

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 44177)
FILED BY DARRYL AKEN AND THALIA)
AKEN TO APPROPRIATE THE PUBLIC)
WATERS FROM SANDRA LYNN SPRING IN)
WASHOE VALLEY, WASHOE COUNTY,))
NEVADA.)

RULING

GENERAL

I.

Application 44177 was filed on July 21, 1981, by Darryl Aken and Thalia Aken to appropriate 0.1 c.f.s. of water from Sandra Lynn Spring to be used for recreational purposes within portions of the W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 10, T.16N. R.19E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 10, T.16.N., R.19E. M.D.B.&M.¹

II.

Application 44177 was timely protested² by Jack Bacon, Dr. Ramon Schmutz and Robert Martin on the following grounds:

Protestants are the successors in interest to a portion of waters of Franktown Creek and its tributaries. Protestants believe the subject spring from its locations is tributary to the main branch of the irrigation system which delivers water to the decreed lands and is in fact tributary to Franktown Creek.

The protestants also refer to Application 35555 which was filed for irrigation and domestic purposes from a spring in the same vicinity and which was subsequently denied by the State Engineer's ruling under allegedly similar circumstances.

III.

Application 44177 was also timely protested² by John H. and Mary Anne Healy on the following grounds:

"Sandra Lynn Spring Pond if placed so as to pond (contain) and interfere with the irrigation ditch to my north field would prevent me from transmitting my allocated water on schedule under Permit Number 02395. Further, I believe no spring exists. In a normal year there is some groundwater runoff until July when all flow stops. Also any excavation must not interfere with the main ditch of Happy Valley Irrigation Company."

1 Application 44177 is a public record in the office of the State Engineer.

2 A copy of the protests are public record on file under Application 44177.

FINDINGS OF FACT

I.

After notice to all parties, a hearing³ was held before the State Engineer in Reno, Nevada, on November 15, 1984, at which time neither the protestants or applicants appeared, or were represented at the hearing.

A resident of the area in attendance informed the State Engineer that although the applicants were not able to be at this particular hearing, they were still interested in pursuing the application. The resident was asked to contact the applicants to have them contact the State Engineer as soon as possible.

II.

Application 35555 was filed on June 19, 1978, by Jack L. Bacon, Robert E. and Lillian M. Martin, Ramon H. and Abigail Ryan Schmutz to appropriate 1.0 c.f.s. of water from an unnamed spring for irrigation and domestic purposes. The point of diversion is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T.16N., R.19E., M.D.B.&M.

This subject application was subsequently denied by the State Engineer's Ruling Number 2451 because the source was considered to be one of the "numerous springs in the irrigated area that contributed to a subirrigation condition" and thus was already considered in establishing the duty of water in the Franktown Decree.⁴

III.

The source of water for Application 44177 is within the same "irrigated area" referenced in the State Engineer's Ruling Number 2451.⁵

IV.

There has been no direct interest shown by either the protestants and/or applicants of the subject application since to and including the referenced public hearing of November 15, 1984.

V.

The State Engineer finds that there is no unappropriated water at the source and that granting of the subject application would interfere with or impair existing rights.

VI.

There is evidence in the record that approval of the subject application would not be in the public interest.⁶

3 A transcript of the administrative hearing is available in the office of the State Engineer as a matter of public record.

4 Application 35555 and the State Engineer's Ruling Number 2451 are public record available in the office of the State Engineer.

5 Proof 02395 and supporting maps in the Franktown Creek Decree, Second Judicial District Court of Nevada, Case No. 182418, June 29, 1960.

6 Subsection IV. State Engineer's Ruling of April 6, 1979, #2451

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁷

II.

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

- a) There is no unappropriated water at the proposed source or
- b) The proposed use conflicts with existing rights or
- c) The proposed use threatens to prove detrimental to the public interest.⁸

III.

The protestants and applicants have not demonstrated a continued interest in the subject application.

IV.

From the evidence and information available, the proposed source of water is fully appropriated under the Franktown Creek Decree therefore approval of said application would interfere with existing rights and would not be in the public interest.

RULING

The Protests to Application 44177 are hereby upheld and said application is hereby denied on the grounds that granting thereof would adversely affect existing rights and would be detrimental to the public interest and welfare.

Respectfully submitted,


PETER G. MORROS
State Engineer

PGM/GC/bk

Dated this 29th day of
January, 1988.

7 NRS 533.325
8 NRS 533.370 subsection 3.