

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

IN THE MATTER OF APPLICATIONS 35912)
AND 35913 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF BURNT LAKE AND RYE)
PATCH CREEK, RESPECTIVELY, WITHIN THE)
DUCK LAKE VALLEY GROUNDWATER BASIN)
(016), WASHOE COUNTY, NEVADA.)

RULING

4592

GENERAL

I.

Application 35912 was filed on September 22, 1978, by Wesley L. Cook to appropriate 4.0 cubic feet per second (cfs) of water from Burnt Lake for the irrigation of 720 acres of land located within the SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 1, T.35N., R.19E., and the SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T.36N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T.35N., R.18E., M.D.B.&M. Information contained within the body of the application indicates that it is the applicant's intention to impound 2000 acre feet of the water requested for appropriation.¹

II.

Application 35913 was filed on September 22, 1978, by Wesley L. Cook to appropriate 5.0 cfs of water from Rye Patch Creek to irrigate the same 720 acres contained within the place of use described under Application 35912. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, T.36N., R.19E., M.D.B.&M.²

FINDINGS OF FACT

I.

The applicant was requested by certified letter dated October 10, 1997, to provide the office of the State Engineer with evidence of any continued interest that he may have in pursuing Applications

¹ File No. 35912, official records in the office of the State Engineer.

² File No. 35913, official records in the office of the State Engineer.

35912 and 35913. The applicant was also informed that if a response was not received within 30 days from the date of the letter, the applications would be considered for denial. A properly endorsed receipt for the certified mailing was received by the office of the State Engineer on October 24, 1997. To this date no information indicating any interest of the applicant in Applications 35912 and 35913 has been received in the office of the State Engineer.^{1,2} The State Engineer finds that the applicant has been provided an opportunity to express his continued interest in pursuing Applications 35912 and 35913, but has failed to do so; therefore, said applications may be considered for denial.

II.

Application 35912 was timely protested by the U.S. Government, Department of the Interior, Bureau of Land Management on the following grounds:¹

Executive Order #107, Public Water Reserve, dated April 17, 1926 withdraw springs and natural waterholes on public lands and reserves water rights for U.S. Government. Burnt Lake is a natural water basin on public lands.

III.

Application 35913 was timely protested by the U.S. Government, Department of the Interior, Bureau of Land Management on the following grounds:²

Application is for water which would have to be released from Burnt Lake, a natural waterhole which has been reserved to the U.S. Government through Executive Order #107, Public Water Reserves, dated 4/17/26. The point of diversion is on public lands owned by the U.S. Government. The applicant must ditch the water across public lands to point of use. No right-of-way for ditches connecting the point of diversion to point of use have been applied for by the applicant or granted by the U.S. Government. Therefore, the applicant cannot make beneficial use of the water without being in violation of 43 CFR 2801-1.4 (unauthorized occupancy).

CONCLUSIONS OF LAW

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 a permit where:⁴

- A. there is no unappropriated water at the proposed source,
- B. the proposed use conflicts with existing rights, or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

On October 10, 1997, the applicant was requested by the office of the State Engineer to provide information concerning any continued interest which he may have in pursuing Applications 35912 and 35913. The applicant was informed that a failure to respond to the request would represent a lack of interest in this matter and would result in said applications being considered for denial. The applicant failed to provide any indication that he intends to move forward with the project envisioned under said applications. Therefore, the State Engineer concludes that it would not be in the public interest to approve applications which the applicant no longer intends to pursue.

³ NRS Chapter 533.

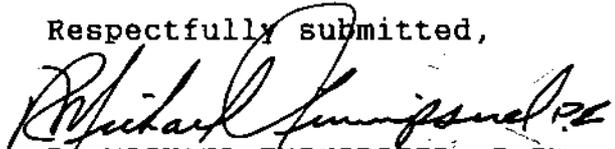
⁴ NRS § 533.370(3).

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RULING

Applications 35912 and 35913 are hereby denied on the grounds that granting said applications would not be in the public interest. No ruling is made on the protest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 22nd day of
December, 1997.