

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

IN THE MATTER OF APPLICATION)
63159 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF MUD SPRING,)
WITHIN THE SNAKE VALLEY)
GROUNDWATER BASIN (195), WHITE)
PINE COUNTY, NEVADA.)

RULING

4685

GENERAL

I.

Application 63159 was filed on June 3, 1997, by Vernon Bosshardt to appropriate 0.223 cubic feet per second (cfs) of water from Mud Spring for mining, milling and domestic purposes within all of Sections 3 and 4, the E½ of Section 5, the N½ NE¼ of Section 8, the NE¼ NW¼ and the NW¼ NE¼ of Section 9, all within T.14N., R.68E., the SE¼ of Section 32, the S½ SE¼ and the SW¼ of Section 33, the N½ NW¼, the SE¼ NW¼, and the S½ of Section 34, all within T.15N., T.68E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 9, T.14N., R.68E., M.D.B.&M.¹

FINDINGS OF FACT

I.

On August 6, 1998, an informal field investigation was conducted at the proposed point of diversion by personnel from the office of the State Engineer. The purpose of the investigation was to determine if water is available for appropriation from Mud Spring under Application 63159. At

¹ File No. 63159, official records in the office of the State Engineer.

the time of the investigation, the flow rate from Mud Spring was estimated to be less than 0.5 gallons per minute which equates to 0.0011 cfs of water.² The State Engineer recognizes that this flow rate most likely reflects a lower than average flow due to the time of year when the measurement was taken, but finds that it would be difficult for the spring to attain the flow rate requested under the subject application except for brief periods of time when abnormally high levels of spring snowmelt occur.

II.

Application 63159 was filed to appropriate water from Mud Spring for use within a mining and milling project. The annual consumptive use of water is estimated by the applicant to be 40,365,850 gallons.¹

Based upon the findings of the August 1998 field investigation and general field observations made at similar springs throughout the region, it can be assumed that the flow generated by Mud Spring typically experiences a drastic reduction in its magnitude by midsummer and remains at this low flow condition until the arrival of the spring freshet. The State Engineer finds that the inability of Mud Spring to attain a sustained flow of the magnitude requested under the subject application disqualifies it as a reliable source of water for the project described under Application 63159.

² Book No. XII, Field Investigations Reports, Memorandums, Report of Field Investigation No. 980, official records in the office of the State Engineer.

III.

Under the provisions of Nevada Revised Statute § 533.367, before a person may obtain a right to the use of water from a spring he must ensure that wildlife which customarily uses the water will have access to it. The State Engineer finds that there is insufficient water to satisfy any additional appropriation of water from Mud Spring above and beyond that required to support a customary use by wildlife.

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 a permit 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;
or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

Application 63159 requests an appropriation of water from Mud Spring which far exceeds the flow found at the spring source. The State Engineer concludes that it would not be in the public interest to issue a permit to

³ NRS Chapter 533.

⁴ NRS § 533.370(3).

Ruling

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appropriate water from a source which is incapable of producing the amount of water requested for appropriation.

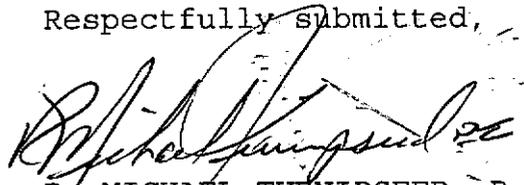
IV.

Before an appropriation of water can occur from a spring source, the applicant must ensure that wildlife will have continued access to it. The flow of Mud Spring is dominated by low flow conditions which are able to satisfy only a diminutive use of the water by wildlife. The approval of Application 63159 would monopolize what water is available for a mining and milling use, removing it as a source of water for wildlife. The State Engineer concludes that this would violate the customary use provisions established under NRS_§ 533.367.

RULING

Application 63159 is denied on the grounds that there is insufficient water available for appropriation at the source and its approval would conflict with the statutory requirements of NRS § 533.367.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 8th day of
December, 1998.