

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

IN THE MATTER OF APPLICATION )  
40044 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF AN UNNAMED )  
SPRING SOURCE WITHIN THE BIG )  
SMOKY VALLEY - TONOPAH FLAT )  
HYDROGRAPHIC BASIN (137A), )  
ESMERALDA COUNTY, NEVADA. )

**RULING**

**#5369**

**GENERAL**

**I.**

Application 40044 was filed on December 20, 1979, by Zimmerman Ranching Corporation and later assigned to Store Safe Redlands Associates, Ltd., a Nevada Corporation doing business as Rock Springs Ranch, to appropriate 0.01 cubic feet per second of water from an unnamed spring for stockwatering purposes for 30 - 40 head of cattle. The proposed place of use is described as being located within the SE¼ NE¼, of Section 4, T.2N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NE¼ of said Section 4.<sup>1</sup>

**II.**

Application 40044 was timely protested by the U.S.D.I. Bureau of Land Management on the following grounds:<sup>1</sup>

This spring originates and flows on land managed by the Bureau of Land Management, U.S. Department of the Interior. This water has been used for Wildlife propagation since 1845, when the land was ceded by Mexico to the United States. Deer and bighorn sheep as well as many small animals and birds, depend on water from this spring. This land has also been used for livestock grazing since 1870 under Federal jurisdiction, in conjunction with many livestock operators. The Bureau has been directed to manage this land under multiple use guidelines.

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<sup>1</sup> File No. 40044, official records in the Office of the State Engineer.

## FINDINGS OF FACT

### I.

The applicant and its agents were notified by certified mail dated October 8, 2003, to submit additional information regarding Application 40044 to the State Engineer's office. The applicant was warned that failure to respond within 30 days would result in denial of the application. Properly endorsed certified mail receipts were received from the applicant and the applicant's agents. An additional letter, sent to the applicant at an alternate address was returned to the Office of the State Engineer, by the U.S. Postal Service, stamped "Not Deliverable as Addressed". To date, the applicant and its agents have expressed no interest in pursuing this application and have not submitted the additional information requested.<sup>1</sup> The State Engineer finds that the applicant and its agents were properly notified of the request for additional information regarding interest in pursuing Application 40044 and have failed to respond.

### II.

The State Engineer finds that there has been no correspondence from the applicant or its agents regarding Application 40044 for at least 12 years.<sup>1</sup>

## CONCLUSIONS

### I.

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

### 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.<sup>3</sup>

### III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:<sup>4</sup>

- A. there is no unappropriated water at the proposed source;

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<sup>2</sup> NRS chapters 533.

<sup>3</sup> NRS § 533.375.

<sup>4</sup> NRS § 533.370(4).

- 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.

**IV.**

The applicant and its agents 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 express any interest in the application for over 12 years demonstrates the applicant's lack of interest in pursuing Application 40044. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

**RULING**

Application 40044 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,

  
HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 8th day of  
June, 2004.