

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

IN THE MATTER OF APPLICATION)
42580 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNNAMED)
SPRING WITHIN THE DAYTON)
VALLEY HYDROGRAPHIC BASIN)
(103), LYON COUNTY, NEVADA.)

RULING

#5439

GENERAL

I.

Application 42580 was filed on October 3, 1980, by John S. Bowers to appropriate 1.0 cubic foot per second of water from an unnamed spring for quasi-municipal and domestic purposes. The proposed place of use is described as being located within a portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24, T.16N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 24.¹

II.

Application 42580 was timely protested by the U.S.D.I. Bureau of Land Management on the following grounds:¹

U.S. Bureau of Land Management needs water to guarantee water availability for all livestock grazing, both present and future. This water is located in the Gold Hill Allotment and it is estimated that 1000 sheep will use the allotment from 1 April to 15 May. In addition the water is needed to guarantee water availability for game and nongame wildlife in the area, both present and future. Also, the water is a public water reserve, Exec. Order #107, and is not open to appropriation.

FINDINGS OF FACT

I.

The applicant and his agent were notified by certified mail dated April 9, 2004, to submit additional information regarding Application 42580 to the State Engineer's office. The applicant was warned that failure to respond within 30 days would result in denial of

¹ File No. 42580, official records in the Office of the State Engineer.

the application. The certified letter to the applicant was returned to the Office of the State Engineer, by the U.S. Postal Service, stamped "Attempted Not Known". The certified letter to the applicant's agent was returned to the Office of the State Engineer, by the U.S. Postal Service, stamped "unclaimed" and handwritten on the letter was "Deceased". To date, the applicant and his agent have expressed no interest in pursuing this application and have not submitted the additional information requested.¹ The State Engineer finds that the applicant and his agent were properly notified of the request for additional information regarding interest in pursuing Application 42580 and have failed to respond.

II.

The State Engineer finds that there has been no correspondence from the applicant or his agent in regards to this application for over 23 years.¹ The State Engineer finds that it is the responsibility of the applicant or his agent to keep this office informed of a current mailing address.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and 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 a permit under an application to appropriate the public water 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 protectible interests in existing domestic wells as set forth in NRS § 533.024; or

² NRS chapters 533.

³ NRS § 533.375.

⁴ NRS § 533.370(4).

- D. the proposed use or change threatens to prove detrimental to the public interest.

IV.

The applicant and his agent 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 this application for over 23 years and the failure to submit requested information demonstrates the applicant's lack of interest in pursuing Application 42580. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

RULING

Application 42580 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 22nd day of
October, 2004.