

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

IN THE MATTER OF APPLICATIONS )  
48101, 48103 AND 48104 FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF )  
SEVERAL TUNNELS AND AN UNNAMED )  
SPRING WITHIN THE DAYTON VALLEY )  
HYDROGRAPHIC BASIN (103), STOREY )  
COUNTY, NEVADA. )

RULING

**#5674**

GENERAL

I.

Application 48101 was filed on June 11, 1984, by Julius Bunkowski to appropriate 0.1 cubic feet per second (cfs) of water from a source that is described as an unnamed spring. The proposed manner and place of use is for quasi-municipal and domestic purposes within portions of Sections 24, 25, and 36, T.16N., R.20E., M.D.B.&M., and portions of Sections 20, 29 and all of Sections 19, 30 and 31, T.16N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 1, T.16N., R.20E., M.D.B.&M. The remarks section of the application states that the water proposed for appropriation will be used to service 2,000 single-family units.<sup>1</sup>

II.

Application 48103 was filed on June 11, 1984, by Julius Bunkowski to appropriate 1.0 cfs of water from a source that is described as a tunnel. The proposed manner and place of use is for quasi-municipal and domestic purposes within portions of Sections 24, 25, and 36, T.16N., R.20E., M.D.B.&M., and portions of Sections 20, 29 and all of Sections 19, 30 and 31, T.16N., R.21E., M.D.B.&M. The

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<sup>1</sup> File No. 48101, official records in the Office of the State Engineer.

proposed point of diversion is described as being located within the NE¼ SE¼ of Section 1, T.16N., R.20E., M.D.B.&M. The remarks section of the application states that the water proposed for appropriation will be used to service 2,000 single-family units.<sup>2</sup>

### III.

Application 48104 was filed on June 11, 1984, by Julius Bunkowski to appropriate 1.0 cfs of water from a source that is described as a tunnel. The proposed manner and place of use is for quasi-municipal and domestic purposes within portions of Sections 24, 25, and 36, T.16N., R.20E., M.D.B.&M., and portions of Sections 20, 29 and all of Sections 19, 30 and 31, T.16N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 1, T.16N., R.20E., M.D.B.&M. The remarks section of the application states that the water proposed for appropriation will be used to service 2,000 single-family units.<sup>3</sup>

### IV.

All of the subject applications were timely protested by three separate parties whose protests issues were based on the contention that the approval of Applications 48101, 48103 and 48104 would impair and conflict with existing rights; however, the denial of these applications does not relate to the merits of the protests. The number of protestants was reduced to two when the South Comstock Tailings disposal Company withdrew its protest by letter dated July 16, 1986. The removal of this protest left William Donovan, Jr. and United Mining Corporation as the remaining active protestants in this matter.

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<sup>2</sup> File No. 48103, official records in the Office of the State Engineer.

<sup>3</sup> File No. 48104, official records in the Office of the State Engineer.

V.

By assignment dated April 27, 1994, title to Applications 48101, 48103 and 48104 was transferred into the name of Lyon County in the records of the Office of the State Engineer.<sup>1,2,3</sup>

**FINDINGS OF FACT**

I.

Once a water right application is protested, its progress through the State Engineer's permitting process is halted until the protest issues are resolved. In the case of Application 48101, a resolution of the protests was accomplished though a formal field investigation conducted by a representative of the State Engineer's office on July 26, 1986. The findings of this field investigation favored the approval of Application 48101 and a set of preliminary permit terms were drafted and ultimately approved for the application. Before a formal permit could be issued, the Applicant was requested by certified mail dated February 15, 1991, to timely submit the necessary permit fee. A receipt for the permit fee in the amount of \$233.00, which is included in the record maintained under the application, signifies that the permit fee was paid by the Applicant in a timely manner.<sup>1</sup> It is at this point that the history of Application 48101 deviates from the normal permitting procedure. The submittal of the required permit fee typically is followed by the issuance of the formal water right permit by the State Engineer. In this case; however, the submittal of the permit fee did not lead to the issuance of a permit. There is no correspondence or memorandum contained within the application file to explain this deviation from normal procedure. The next correspondence that occurred under this application and Applications 48103 and 48104 was a letter sent to the Applicant's successor on

April 27, 1994, that notified Lyon County that it had been assigned ownership in these applications.<sup>1</sup> The State Engineer finds that although, the request for the permit fee was met by the Applicant in a timely manner, Application 48101 never attained permit status.

**II.**

The lack of correspondence from the current Applicant over the last eleven years raises the question as to the level of interest the Applicant retains in completing the applications. To address this issue, the Applicant was requested by certified letter dated September 26, 2002, to provide written evidence of its intent to complete the applications. The Applicant was allowed thirty days from the date of the letter to submit a response with the understanding that a failure to do so would result in a denial of Applications 48101, 48103 and 48104.<sup>1</sup> A return receipt for the certified letter was received in the Office of the State Engineer on September 30, 2002. An examination of the records of the Office of the State Engineer that was made after the expiration of the thirty-day time period, indicates that a response to the letter was never received. The State Engineer finds that the Applicant has been afforded the opportunity to demonstrate an active interest in Applications 48101, 48103 and 48104 and has chosen not pursue this option. Without the Applicant demonstrating an active interest in pursuing the applications, the State Engineer finds that permits should not be issued under the subject applications as the Applicant has not demonstrated any intent to pursue beneficial use of the waters applied for under the applications.

**III.**

The payment of the permit fee associated with Application 48101, did not result in the approval of the

application by the State Engineer. At the time of its submittal, the permit fee was calculated by the Office of the State Engineer to be \$223.00.<sup>1</sup> The State Engineer finds that if a permit is not issued under Application 48101, the permit fee submitted by the original Applicant should be properly remitted if the original Applicant can be located.

**IV.**

As to Applications 48101, 48103 and 48104, a second field investigation was conducted on September 12, 2002. This field investigation found that very low flow rates were found on all three sources. The field investigation indicates there are three claims of historic use and two permitted water rights on these sources that would utilize most or all the flows. The field investigation concluded the use of these water sources would not be a reliable source for new development. The State Engineer finds it is questionable whether there is sufficient water to satisfy all of the senior priorities on the system; thus there is no unappropriated water to appropriate under these applications.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>4</sup>

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>5</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

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<sup>4</sup> NRS chapter 533.

<sup>5</sup> NRS § 533.370(5).

- 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.

**III.**

The State Engineer concludes that the approval of water right applications that the Applicant has failed to maintain an active interest in would threaten to prove detrimental to the public interest.

**IV.**

The State Engineer concludes that the approval of a water right on fully appropriated sources would threaten to prove detrimental to the public interest.

**RULING**

Applications 48101, 49103 and 48104 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest issues.

Respectfully submitted,

  
TRACY TAYLOR, P.E.  
State Engineer

TT/MB/jm

Dated this 29th day of  
November, 2006.