

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

IN THE MATTER OF APPLICATION)
53156 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF AN)
UNNAMED SPRING WITHIN THE)
WALKER LAKE VALLEY -)
WHISKEY FLAT - HAWTHORNE)
SUBAREA HYDROGRAPHIC BASIN)
(110-C), MINERAL COUNTY,)
NEVADA.)

RULING
5317

GENERAL

I.

Application 53156 was filed on April 21, 1989, by Lloyd W. Magnuson and Delbert L. Cornella to appropriate 0.25 cubic feet per second of water from an unnamed spring for irrigation, landscaping and domestic purposes within the S½ NW¼ and portions of the N½ SW¼ of Section 8, T.7N., R.30E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SE¼ of Section 7, T.7N., R.30E., M.D.B.&M.¹

II.

Application 53156 was timely protested by Thomas M. Burns, Esq., attorney for the Burns Family Trust on the following grounds:¹

- 1) The land is private and owners do not wish to allow access;
- 2) The owners plan to claim vested rights.

FINDINGS OF FACT

I.

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.²

II.

By letter dated February 7, 2002, the State Engineer's staff inquired of interest in Application 53156 by the applicants, the protestant, and other interested parties specified in the

¹ File No. 53156, official records in the Office of the State Engineer.

² NRS § 533.375.

application file. Mr. Thomas M. Burns, Esq., responded on February 15, 2002, by withdrawing his protest against the application. Certified mail to the applicants and their agent were returned February 11, 2002, stamped "Return to Sender-Attempted, Not Known."¹

On May 27, 2003, a letter was sent to the applicants, Lloyd W. Magnuson and Delbert L. Cornella, to advise them that the protest has been withdrawn and to request additional information to support the application. This letter was returned to the Office of the State Engineer by the U.S. Postal Service June 2, 2003, stamped "Return to Sender-Not Deliverable as Addressed, Unable to Forward."¹ However, the return receipt for the certified letter was received in the office of the State Engineer on June 3, 2003. The State Engineer finds to date no response has been received to the request for information.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

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 an application to appropriate the public waters 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
- D. the proposed use or change threatens to prove detrimental to the public interest.

³ NRS § 533.375.

⁴ NRS § 533.370(3).

IV.

The applicants were properly notified of the request for additional information concerning interest in this application and have failed to submit this information to the Office of the State Engineer. The State Engineer concludes that failure to submit additional information or keep a current mailing address on file demonstrates the applicants' lack of interest in pursuing Application 53156. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under an application for which sufficient information is not available to properly guard the public interest.

RULING

Application 53156 is hereby denied on the grounds that its issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/CAB/jm

Dated this 20th day
of February 2004.