

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

IN THE MATTER OF APPLICATIONS)
57902 AND 57903 FILED TO)
APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE AND A SURFACE SOURCE)
WITHIN THE SOUTH FORK)
OWYHEE RIVER HYDROGRAPHIC)
BASIN (35), ELKO COUNTY,)
NEVADA.)

RULING

5330

GENERAL

I.

Application 57902 was filed on July 27, 1992, by Independence Mining Company, Inc., and later assigned to Western Exploration, Inc., to appropriate 1.0 cubic foot per second (cfs) of water from an underground source for mining, milling and domestic purposes. The place of use is described as being located within Sections 1 and 12, T.43N., R.52E., and Sections 6 and 7, T.43N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T.43N., R.52E., M.D.B.&M.¹

II.

Application 57903 was filed on July 27, 1992, by Independence Mining Company, Inc., and later assigned to Western Exploration, Inc., to appropriate 0.05 cfs of water from unnamed spring for mining and milling purposes. The place of use is described as being located within Sections 1 and 12, T.43N., R.52E., 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.43N., R.52E., M.D.B.&M.²

FINDINGS OF FACT

I.

The applicant was notified by certified mail dated October 11, 2002, to submit additional information to the Office of the State Engineer. The applicant was warned that

¹ File No. 57902, official records in the Office of the State Engineer.

² File No. 57903, official records in the Office of the State Engineer.

failure to respond within 60 days could result in denial of the applications. The U.S. Postal Service returned a properly endorsed certified mail receipt to the Office of the State Engineer on October 15, 2002.¹ No information from the applicant was received.

The applicant was notified a second time by certified mail dated December 13, 2002, to submit additional information to the State Engineer's office. The applicant was warned that failure to respond within 60 days could result in denial of the applications. The U.S. Postal Service returned a properly endorsed certified mail receipt to the Office of the State Engineer on December 19, 2002.¹ To date, no information from the applicant has been received. The State Engineer finds that the applicant was properly notified of the request for additional information regarding Applications 57902 and 57903, and failed to respond.

II.

Well over a year has passed since the applicant was first notified of the request for additional information. The State Engineer finds that ample time has passed for the applicant to submit the required 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.⁴

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;

³ NRS chapters 533 and 534.

⁴ NRS § 533.375.

⁴ NRS § 533.370(3).

- 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 was properly notified of the requirement for additional information and has failed to submit the information to the Office of the State Engineer. The State Engineer concludes that the failure to respond demonstrates the applicant's lack of interest in pursuing Applications 57902 and 57903. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue permits under these circumstances.

RULING

Applications 57902 and 57903 are hereby denied on the grounds their issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 26th day

of February, 2004.