

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

IN THE MATTER OF APPLICATION 36901)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE SUSIE CREEK)
AREA HYDROGRAPHIC BASIN (050),)
ELKO COUNTY, NEVADA.)

RULING

#5398

GENERAL

I.

Application 36901 was filed on March 7, 1979, by Thomas F. Jefferson to appropriate 5.4 cubic feet per second of water from an underground source for irrigation purposes in support of a Desert Land Entry. The proposed place of use is described as being 320 acres located within the S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 12, T.33N., R.52E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T.33N., R.52E., M.D.B.&M.¹

II.

Application 36901 was timely protested by Maggie Creek Ranch, Inc. on the following grounds:¹

- 1.) To grant the draft of water for this and neighboring applications for D.L.E. irrigation would work to lower the water table in the vicinity to a point which may adversely effect spring and pond stockwater sources, which protestant now enjoys.
- 2.) Protestant is sole owner of fee land in the vicinity, and is sole holder of a U.S.B.L.M. grazing lease to that public land covered by this application.

¹ File No. 36901, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

The applicant and his agents were notified by certified mail dated October 8, 2003, to submit additional information regarding Application 36901 to the State Engineer's office. The applicant was warned that failure to respond within 30 days would result in denial of the application. The letter to the applicant was returned to the Office of the State Engineer, by the U.S. Postal Service, stamped "Returned to Sender". Also, handwritten on the envelope was "No Such Person". Properly endorsed certified mail receipts were received from the applicant's agents. To date, the applicant and his agents 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 agents were properly notified of the request for additional information regarding interest in pursuing Application 36901 and have failed to respond.

II.

The State Engineer finds that there has been no correspondence from the applicant or his agents regarding Application 36901 for at least 15 years.¹ The State Engineer finds that it is the responsibility of the applicant or his agents 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

² NRS chapters 533 and 534.

³ NRS § 533.375.

⁴ NRS § 533.370(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.

IV.

The applicant and his 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 15 years and the failure to maintain a current mailing address demonstrates the applicant's lack of interest in pursuing Application 36901. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

RULING

Application 36901 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 28th day of
June, 2004.