

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

IN THE MATTER OF APPLICATIONS 54227)
AND 54228 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE DIXIE VALLEY)
HYDROGRAPHIC BASIN (128), CHURCHILL)
COUNTY, NEVADA.)

RULING
5575

GENERAL

I.

Application 54227 was filed on December 12, 1989, by Edward and Alice Slawinski to appropriate 5.4 cubic feet per second of water from an underground source for irrigation and domestic purposes. The proposed place of use is described as being located within the SW $\frac{1}{4}$, Lot 3, Lot 4, SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T.21N., R.34E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 24.¹

II.

Application 54228 was filed on December 12, 1989, by Edward and Alice Slawinski to appropriate 5.4 cubic feet per second of water from an underground source for irrigation and domestic purposes. The proposed place of use is described as being located within the N $\frac{1}{2}$ of Section 24, T.21N., R.34E., 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 24.²

FINDINGS OF FACT

I.

Applications 54227 and 54228 were filed for the purpose of obtaining a permit for underground water to irrigate approximately 590 acres within the Dixie Valley Hydrographic Basin, Churchill County, Nevada. A review of records in the Office of the State Engineer show that the United States of America took title to the land described in the places of use through condemnation on behalf of the Naval Air Station in Fallon, Nevada. This condemnation process

¹ File No. 54227, official records in the Office of the State Engineer.

² File No. 54228, official records in the Office of the State Engineer.

resulted in legal action appealing the condemnation under Court case number CV-N-95-00546-DWH. Information from the U.S. District Court indicates that the appeal of the condemnation was settled and ultimately dismissed by stipulation between the parties. As a result, it appears that the applicants no longer own or control the land described under the points of diversion and places of use of Applications 54227 and 54228.¹

Subsequently, the applicants and their agent were contacted by certified mail, dated January 18, 2005, and asked to submit additional information including a written response regarding further interest in pursuing the applications. The applicants were warned that failure to respond within 30 days would result in denial of the applications. A properly endorsed certified mail receipt was received in the State Engineer's Office from the applicants on January 26, 2005. The certified mailing to the applicants' agent was returned by the U.S. Postal Service as undeliverable. To date, the applicants and their agent have expressed no interest in pursuing these applications and have not submitted the additional information requested.¹

The State Engineer finds that the applicants and their agent were properly notified of the request for additional information regarding interest in pursuing Applications 54227 and 54228 and failed to respond. The State Engineer further finds that the applicants no longer own or control the land described in the points of diversion and places of use of the applications.

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

³ NRS chapters 533 and 534.

⁴ 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 State Engineer concludes that the applicants do not own or control the land at the points of diversion and places of use described under Applications 54227 and 54228. The State Engineer further concludes that to grant an application to appropriate the public waters where the applicant does not own or control the lands would not be in the public interest.

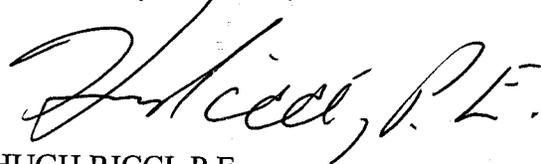
V.

The applicants and their 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 the applications demonstrates the applicants' lack of interest in pursuing Applications 54227 and 54228. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

RULING

Applications 54227 and 54228 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 10th day of
March, 2006.