

IN THE MATTER OF APPLICATION)
21423 FILED BY MRS. JAN T.)
BERRY ON AUGUST 2, 1963 TO)
APPROPRIATE WATER FROM UNDER-)
GROUND IN NYE COUNTY, NEVADA)

R U L I N G

GENERAL:

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Application 21423 was filed on August 2, 1963 by Mrs. Jan T. Berry to appropriate 5.4 c.f.s. of water from an underground source for irrigation purposes. The proposed point of diversion is in the NW $\frac{1}{2}$ NW $\frac{1}{2}$ Sec. 2, T. 17 S., R. 49 E., M.D.B.&M. The proposed place of use is the N $\frac{1}{2}$ Sec. 2, T. 17 S., R. 49 E., M.D.B.&M. The application was filed in support of DLE Nev. 055651.

The applicant was notified by letter dated January 31, 1964 that no action would be taken on Application 21423 pending a further ground water study of the area (Amargosa Desert).

On December 2, 1964, Patent No. 27-65-0147 was issued to the applicant under DLE Nev. 055651 for the following subdivisions in Sec. 2, T. 17 S., R. 49 E., M.D.B.&M.: Lot 3, SE $\frac{1}{2}$ NW $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{2}$, SE $\frac{1}{2}$ SW $\frac{1}{2}$.

Since the proposed point of diversion under Application 21423 is located on vacant public lands, and not within lands patented to the applicant, the applicant was requested to furnish evidence that she had applied for a special land use permit from the Bureau of Land Management to drill a well on government land, and for a right-of-way to convey water across government land. This request was made April 12, 1966. In a reply dated April 23, 1966, this office was advised by N. O. Berry, agent for the applicant, that action had been initiated to obtain the necessary land-use and right-of-way permits from the Bureau of Land Management. At that time, the agent was notified that action would be delayed until September 1, 1966.

No further action was taken on Application 21423 until May 31, 1968, at which time the applicant was requested to express interest in the application. In reply, the applicant's agent notified this office that the land had been sold to Messrs. Johnny F. Mills and Don Martinsen, although deeds have not been filed with this office assigning the application. However the purchasers were contacted as to their interest on August 3, 1968; and, by endorsement to our letter, stated that they were not interested in pursuing Application 21423. Accordingly, on September 13, 1968 a certified letter was sent to Mr. N.O. Berry, agent of the applicant, requesting withdrawal of Application 21423. A return receipt signed by Mrs. N. O. Berry has been received by this office, establishing receipt of the letter. No reply had been received in response as of October 13, 1968.

OPINION

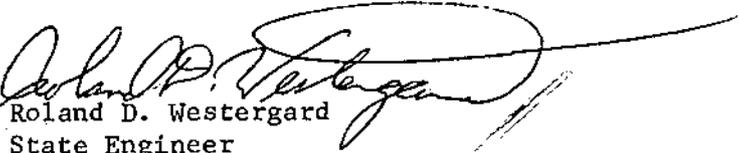
It is the opinion of the State Engineer that: where the applicant does not own or control the land from which the proposed diversion is to

be made and has failed to take necessary steps to obtain such ownership or control; and where the applicant has failed to indicate an interest in the proposed diversion; granting of a permit would be detrimental to the public welfare and not in the best public interest.

RULING

Application 21423 is hereby denied on the grounds that it would be detrimental to the public welfare, and not in the best public interest.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW:JCP:jls

Dated this 22nd Day

of October, 1968