

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 43041)
FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF A)
PORTION OF THE WATERS OF AN)
UNDERGROUND SOURCE HERETOFORE)
APPROPRIATED UNDER PERMIT 26283,)
CERTIFICATE 7987, IN THE AMARGOSA)
DESERT, NYE COUNTY, NEVADA.)

RULING

GENERAL

Application 43041 was filed on January 2, 1981, by Stewart Equipment Auctioneers (International), Inc., to change the point of diversion and place of use of 0.3 c.f.s., a portion of water from an underground source heretofore appropriated under Permit 26283, Certificate 7987. The proposed use is for irrigation purposes on 40 acres of land within the NE1/4 NW1/4 Section 17, T.16S., R.48E., M.D.B.&M. The proposed point of diversion is described as being within the NW1/4 NE1/4 Section 17, T.16S., R.48E., M.D.B.&M. The existing place of use is within the SE1/4 SW1/4 Section 18, T.16S., R.48E., M.D.B.&M., and the existing point of diversion is described as being within the NW1/4 NW1/4 Section 18, T.16S., R.48E., M.D.B.&M.¹

FINDINGS OF FACT

I.

On August 17, 1981, a certified letter was sent to the applicant stating that the proposed point of diversion under Application 43041 is the same as the point of diversion under Permit 17417, Certificate 5888, in the name of J. Homer H. Overholser. The letter requested that the applicant submit a complete chain of title from the owner of record of Permit 17417, Certificate 5888, to the present owner if the permit was transferred to Stewart Equipment Auctioneers (International), Inc., or to present a copy of an agreement between J. Homer H. Overholser and the applicant addressing the joint use of the well. No response to that letter has been received by the State Engineer's office.¹

II.

On December 18, 1981, a certified letter was sent to the applicant reiterating the request for title clarification information and setting a deadline of thirty (30) days for a reply.¹

III.

On March 25, 1982, a Grant, Bargain, Sale Deed, transferring ownership from J. Homer H. Overholser to Stewart Equipment Auctioneers (International), Inc., was received by the State Engineer's office.¹

¹ Public record in the office of the State Engineer.

IV.

On April 15, 1982, a letter was sent to the applicant stating that the Grant, Bargain, Sale Deed, which transferred ownership under portions of Permit 26283 from Eugene G. McCarthy to Stewart Equipment Auctioneers (International), Inc., did not transfer water rights in the SE1/4 SW1/4 Section 18, T.16S., R.48E., M.D.B.&M., which Application 43041 is seeking to change.¹

V.

On July 9, 1982, a certified letter was sent to the applicant stating that the applicant had not yet presented the requested title clarification, specifically, the water rights covering the SE1/4 SW1/4 Section 18, T.16S., R.48E., M.D.B.&M., a portion of Permit 26283. The letter also stated that the Division of Water Resources had received a call from John O'Brien, Esq., representing the applicant, on April 27, 1982, and that Mr. O'Brien stated that he would look into the problem.¹

VI.

On August 6, 1982, a letter was received from the law office of O'Brien and Johnson, representing the applicant, stating that they would review the matter for Mr. Stewart and contact the Division of Water Resources within one month. No contact or information was received by the State Engineer's office.¹

VII.

On February 20, 1985, a letter was sent to the applicant stating that before the application could be approved, the Division of Water Resources must receive a complete chain of title to show ownership of that portion of Permit 26283. This letter was returned to sender as undeliverable as addressed.¹

VIII.

On March 4, 1985, a certified letter was sent to John D. O'Brien, Esq., representing the applicant, asking him to contact the applicant and resolve the title clarification. Mr. O'Brien responded to this letter with correspondence dated March 12, 1985, stating that the applicant, Mr. Stewart, President of Stewart Equipment Auctioneers (International), Inc., had passed away on July 25, 1984, and his estate is being represented by James C. Mahan, Esq., of Mahan & Ellis, Las Vegas, Nevada.¹

IX.

On March 25, 1985, a letter was sent to Mahan and Ellis requesting that the successors of interest, should they be interested in the application, inform the Division of Water Resources within thirty (30) days of their intent concerning the application. No response to that letter was received by the State Engineer's office.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.²

II.

The State Engineer may require additional information before approval or rejection of an application pursuant to NRS 533.375.

III.

There has been no response to the requests for additional information from the applicant or his successors of interest under Application 43041.

RULING

Application 43041 is hereby denied on the grounds that the additional information requested from the applicant was not received by the State Engineer and to approve said application without the additional information requested would not be in the public interest.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/JO/bl

Dated this 17th day of
December, 1985.

² NRS 533.325.