

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

IN THE MATTER OF APPLICATION 54262 )  
FILED TO APPROPRIATE THE UNDERGROUND )  
WATERS OF THE SALMON FALLS CREEK AREA )  
GROUNDWATER BASIN (040), ELKO COUNTY, )  
NEVADA. )

RULING

# 4668

GENERAL

I.

Application 54262 was filed on December 21, 1989, by Contact Land Corp. to appropriate 1.0 cubic feet per second of water from an underground source. The proposed manner and place of use are for quasi-municipal purposes within portions of the NE¼ SW¼ of Section 20, T.45N., R.64E., M.D.B. & M. The proposed point of diversion is described as being located within the SE¼ SW¼ of said Section 20. Information contained within the remarks section of Application 54262 indicates that this application was filed to provide water service to 350 single family residences.<sup>1</sup>

FINDINGS OF FACT

I.

By correspondence dated May 9, 1990, the Director of Elko County Engineering Services notified the State Engineer that the current zoning of the place of use under Application 54262 did not allow the development of multiple residences. The State Engineer was further informed that the applicant's attempt to change the zoning of this parcel of land was denied by the Elko County Planning Commission, with an appeal of this decision filed by the applicant with the Elko County Board of Commissioners.<sup>1</sup>

By letter dated June 26, 1990, the office of the State Engineer requested the Elko County Manager to provide information concerning the final decision of the Elko County Commissioners on the applicant's change of zoning request.<sup>1</sup> The State Engineer

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<sup>1</sup> File No. 54262, official records in the office of the State Engineer.

finds that no information has been submitted to the office of the State Engineer by any party in response to this request.

**II.**

The Contact Land Corp. was requested by letter dated December 21, 1995, to provide the office of the State Engineer with evidence of any continued interest in pursuing Application 54262. The applicant was cautioned that a failure to respond to this request within thirty days would result in the denial of said application. A second letter was sent by the office of the State Engineer dated September 20, 1996, requesting the applicant to submit information specific to any zoning changes which would allow the project under Application 54262 to proceed. The applicant was once again cautioned that a failure to respond within a thirty day time period would represent a lack of interest on the applicant's part in pursuing Application 54262. The certified mail receipts for both the 1995 and 1996 letters were received in the office of the State Engineer stamped "Undeliverable as Addressed" and "Insufficient Address", respectively, by the United States Postal Service.<sup>1</sup> To this date no information has been received in the office of the State Engineer in response to the requests for additional information.

**III.**

It is a long established policy within the office of the State Engineer that it is the applicant's responsibility to inform said office of any changes which may occur in addresses and/or owners of record specific to a water right. The State Engineer finds that the applicant was correctly notified at the correct address of the need for additional information.

**IV.**

The State Engineer finds that on two separate occasions the applicant has been requested by the office of the State Engineer to provide said office with evidence of a continued interest in pursuing Application 54262. On both occasions the applicant has

been cautioned that a failure to respond would result in said application being considered for denial. The State Engineer further finds that the applicant's failure to respond to his requests for information represents a lack of continued interest in the matter of Application 54262 and said application must be denied.

#### CONCLUSIONS

##### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>2</sup>

##### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>3</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

##### III.

On two separate occasions, the applicant was requested by the office of the State Engineer to provide information concerning any continued interest which it may have in pursuing Application 54262. The applicant was informed on both occasions that a failure to respond to the request would represent a lack of interest in this matter and would result in said application being considered for denial. To this date the applicant has failed to provide any indication that it intends to move forward with the project envisioned under said application. Therefore, the State Engineer concludes that it would not be in the public interest to approve an application which the applicant no longer intends to pursue.

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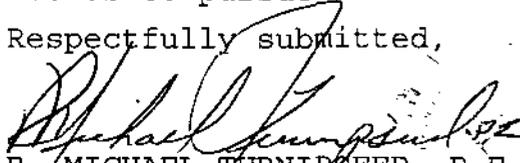
<sup>2</sup> NRS § Chapter 533.

<sup>3</sup> NRS § 533.370(3).

**RULING**

Application 54262 is hereby denied on the grounds that it would not be in the public interest to approve an application which the applicant no longer intends to pursue.

Respectfully submitted,

  
R. MICHAEL TURNIRSEED, P.E.  
State Engineer

RMT/MDB/cl

Dated this 23rd day of  
October, 1998.