

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

IN THE MATTER OF APPLICATION )  
53726 FILED TO APPROPRIATE THE )  
PUBLIC WATERS FROM DUN GLEN )  
CREEK WITHIN THE IMLAY AREA )  
HYDROGRAPHIC BASIN (72), )  
PERSHING COUNTY, NEVADA. )

RULING

# 5156

GENERAL

I.

Application 53726 was filed on July 31, 1989, by East West Minerals, Inc., to appropriate 0.5 cubic feet per second of water from Dun Glen Creek for mining and domestic purposes. The proposed place of use is described as the E½ of Section 17, T.33N., R.36E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 21, T.33N., R.36E., M.D.B.&M.<sup>1</sup>

II.

The Application was timely protested by Tahoe Milling Inc., on the following grounds:

Tahoe Milling Inc. owns [sic] both the surface and sub-surface water rights located above East West Minerals Inc. proposed point of diversion. At this time, due to drought conditions, no surface water flows beyond Tahoe Milling Inc. holding ponds. Furthermore, to release water from Tahoe Milling Inc. ponds for use by East West Minerals Inc. would effectively put Tahoe Milling Inc. out of business. Lastly, if East West Minerals were to construct a well in the proposed point of diversion, Tahoe Milling Inc. believes that this water use would lower the water table and damage Tahoe Milling Inc. up-stream water permits.

THEREFORE the protestant requests that the application be Denied or issued subject to prior rights.<sup>1</sup>

<sup>1</sup> File No. 53726, official records in the Office of the State Engineer.

### III.

The Application was timely protested by Frank Olagaray on the following grounds:

I Frank Olagaray, run 400 pairs of cows in the range situated just below the Dun Glen Creek. The creek runs through the range for about twommiles [sic]. Since it has been dry for several years, the creek runs into the range for only a half mile and at times during the summer it does not make to the range. I am protesting so that my cattle would be able to use the water.

THEREFORE the protestant requests that the application be Denied.<sup>1</sup>

### IV.

The Application was timely protested by Miles L. Painter and Vern Heckman on the following grounds:

The point of diversion is upon a mining claim, namely Dun Glen #7 Placer Claim owned by your Protestants. Protestant Vern Heckman is President of Humboldt Ranches, Inc., a Nevada Corporation which uses the water of Dun Glen Creek for livestock watering purposes.

THEREFORE the protestant requests that the application be DENIED.<sup>1</sup>

## FINDINGS OF FACT

### I.

The applicant and its agent were notified by certified mail dated June 12, 2002, to advise the Office of the State Engineer in writing if they were still interested in pursuing Application 53726. The applicant was warned that failure to respond within 60 days could result in denial of the application. The certified letter to the applicant was returned by the U.S. Postal Service stamped "RETURNED TO SENDER FORWARDING ORDER EXPIRED". Properly endorsed receipts are on file for the applicant's agent.<sup>1</sup>

To date, no information on this matter has been submitted to the State Engineer's Office. The State Engineer finds that the applicant and its agent were properly notified of the request for additional information regarding interest in pursuing Application 53726 and failed to respond.

II.

The State Engineer finds that it is the responsibility of the applicant, or their successor in interest, 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.<sup>2</sup>

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.<sup>3</sup>

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:<sup>4</sup>

- 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 its agent were properly notified of the requirement for additional information concerning this application and have failed to submit the information to the State Engineer's Office. The State Engineer concludes that the failure to respond affirms the applicant's lack of interest in pursuing Application 53726.

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<sup>2</sup> NRS chapter 533.

<sup>3</sup> NRS § 533.375.

<sup>4</sup> NRS § 533.370(3).

**RULING**

Application 53726 is hereby denied on the grounds that the applicant or its agent have not submitted the information requested by the State Engineer's Office and that without this information the granting of the application would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest claims.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 25th day of  
September, 2002.