

Done

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

IN THE MATTER OF APPLICATIONS 45755)
AND 45756 FILED TO CHANGE THE POINT)
OF DIVERSION AND PLACE OF USE OF)
WATER FROM PINE CREEK PREVIOUSLY)
DECREED UNDER CLAIM NO. 00301 OF)
THE BARTLETT DECREE OF THE HUMBOLDT)
RIVER ADJUDICATION, PINE VALLEY)
HYDROGRAPHIC BASIN (053), EUREKA)
COUNTY, NEVADA.)

RULING
5290

GENERAL

Application 45755 was filed June 4, 1982, by Harold and Leora J. Lund and Calvin Dean Stitzel and Rita Ann Stitzel to change the point of diversion and place of use of a portion of the waters of Pine Creek previously decreed under Claim No. 00301 of the Bartlett Decree of the Humboldt River Adjudication (Claim No. 00301).¹ The proposed place of use is described as being within portions of the NW¹/₄SW¹/₄ and SW¹/₄NW¹/₄ of Section 1 and portions of the NE¹/₄SE¹/₄, SE¹/₄NE¹/₄ and SW¹/₄NE¹/₄ of Section 2, all within T.31N., R.51E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¹/₄NE¹/₄ of Section 2, T.31N., R.51E., M.D.B.&M.²

Application 45756 was filed June 4, 1982, by Harold and Leora J. Lund and Calvin Dean Stitzel and Rita Ann Stitzel to change the point of diversion and place of use of a portion of the waters of Pine Creek previously decreed under Claim No. 00301. The proposed place of use is described as being within portions of the NE¹/₄SW¹/₄, NW¹/₄SW¹/₄, SE¹/₄NW¹/₄, SW¹/₄NW¹/₄ and NW¹/₄NW¹/₄ of Section 1 and portions of the SE¹/₄NE¹/₄, NE¹/₄NE¹/₄ and NW¹/₄NE¹/₄ of Section 2, all within T.31N., R.51E., M.D.B.&M. The proposed

¹ In the matter of the Determination of the Relative Rights of the Waters of the Humboldt River Stream System and Tributaries, Case No. 2804, Sixth Judicial District Court of Nevada, In and for the County of Humboldt, 1923-1938. See Claim No. 00301, J. W. Ebert, Bartlett Decree, p.154 (Humboldt Decree).

² File No. 45755, official records in the Office of the State Engineer.

point of diversion is described as being located within the NW¼SE¼ of Section 1, T.31N., R.51E., M.D.B.&M.³

The current owner of record of Applications 45755 and 45756 is Palisade Ranch, Inc.

FINDINGS

I.

Palisade Ranch, Inc. and the agent for the original applicant were requested by letter dated April 1, 1994, to provide additional information in order for the State Engineer to further process the applications. The State Engineer finds that no additional information was received and that no further action was taken on Applications 45755 and 45756.

II.

By letter dated April 28, 1999, sent by certified mail, the Applicant and agent were again requested to furnish the additional information needed by the State Engineer to process Applications 45755 and 45756. The applicant and agent were further warned that if no response was received within sixty (60) days the State Engineer would conclude that they were no longer interested and would deny the applications. On June 25, 1999, by oral communication a sixty (60) day extension was granted to provide the requested information. The State Engineer finds that the applicant and agent were properly noticed and by failing to respond the State Engineer finds that they are no longer interested in pursuing Applications 45755 and 45756.^{2,3}

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

Before either approving or rejecting an application, the State Engineer may require additional information as will enable him to properly safeguard the public interest.⁵

³ File No. 45756, official records in the Office of the State Engineer.

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.375.

III.

The State Engineer is prohibited by law from granting an application to appropriate the public water where:⁶

- 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 the protectible interest of existing domestic well as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

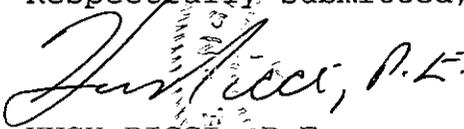
IV.

The applicant and its' agent were properly notified by certified mail and were given 120 days to respond if they were still interested in pursuing Applications 45755 and 45756. The State Engineer concludes that the applicant's failure to respond affirms its' lack of interest in continuing with the applications and to grant applications for which the applicant has expressed no interest in pursuing would threaten to prove detrimental to the public interest.

RULING

Applications 45755 and 45756 are hereby denied on the grounds that the applicant and its' agent have not submitted the information requested by the State Engineer's Office and that without this information the granting of the applications would threaten to prove detrimental to the public interest.

Respectfully submitted,


HUGH RICCIO, P.E.
State Engineer

HR/KH/d1

Dated this 7th day of
October, 2003.

⁶ NRS § 533.370 (3).