

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

IN THE MATTER OF APPLICATION 44620)
FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF A)
PORTION OF THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 19872,)
CERTIFICATE 5976, WITHIN THE PAHRUMP)
VALLEY HYDROGRAPHIC BASIN (162),)
NYE COUNTY, NEVADA.)

RULING
5325

GENERAL

I.

Application 44620 was filed on October 13, 1981, by Roger Charbonneau to change the point of diversion and place of use of 0.882 cubic feet per second (cfs), a portion of the underground waters previously appropriated under Permit 19872, Certificate 5976. The proposed and existing manner of use is for irrigation and domestic purposes. The proposed place of use is described as being 69.44 acres located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T.21S., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 13.¹

II.

Certificate 5976 was issued on February 1, 1966, under Permit 19872 for 1.67 cfs for irrigation and domestic purposes. The current owners of record are The Willinger Family Partnership an Arizona Limited Partnership and Russell M. Barakat M.D., Trustee of the Defined Benefit Pension Plan and Trust, Leonard G. Buchholz Living Trust, the N. Ghahreman MD Ltd. Profit Sharing Plan, Fereydoon Tofigh FACS, Ltd., Profit Sharing, the Carolyn Buckingham Revocable Trust Agreement, and Susanne Moore.²

III.

Application 44620 was timely protested by George Spector on the following grounds:

¹ File No. 44620, official records in the Office of the State Engineer.

² File No. 19872, official records in the Office of the State Engineer.

- (1) Protestant holds a security interest in said Certificate per prior sale to Jerry and Jerrolyne Bledsoe, subsequently assumed by the Applicant (see copy of Deed of Trust enclosed) still outstanding and delinquent since December, 1981.
- (2) In addition, Applicant, in violation of a Financing Statement (copy enclosed) has removed pump, motor and irrigation lines from the premises in violation of the Deed of Trust and Financing Statement.
- (3) The Deed of Trust the Bledsoes received in the sale to the Applicant (copy enclosed) is in foreclosure for failure of the Applicant to make the June 15, 1982 and all subsequent installments.

FINDINGS OF FACT

I.

The applicant and his agent were notified by certified mail dated April 10, 2003, to submit additional information regarding Application 44620 to the State Engineer's office. The applicant was notified that failure to respond by May 30, 2003, would be taken as an indication the applicant was no longer interested in pursuing the application. Properly endorsed certified mail receipts were received in the Office of the State Engineer from the applicant and his agent on April 18, 2003, and April 14, 2003, respectively. To date, the applicant and his agent have expressed no interest in pursuing this application and have not submitted the additional information requested. The State Engineer finds that the applicant and his agent were properly notified of the request for additional information regarding interest in pursuing Application 44620 and failed to respond.

II.

The State Engineer finds that there has been no correspondence from the applicant or his agent regarding Application 44620 for at least 21 years.¹

III.

Records in the State Engineer's office show that the applicant transferred what water rights he owned under Permit 19872, Certificate 5976 to other persons. The State Engineer finds that the applicant does not own that portion of Permit 19872, Certificate 5976, requested for change under Application 44620.²

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

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.⁴

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁵

- 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 his agent were properly notified of the requirement for additional information and have failed to submit the information to the State Engineer's office. The State Engineer concludes that the failure to express any interest in the application for over 21 years demonstrates the applicant's lack of interest in pursuing Application 44620. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

V.

The State Engineer concludes that to grant a permit under change Application 44620 when the applicant does not own any portion of the water right under Permit 19872, Certificate 5976, would threaten to prove detrimental to the public interest.

³ NRS chapters 533 and 534.

⁴ NRS § 533.375.

⁵ NRS § 533.370(3).

RULING

Application 44620 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,

A handwritten signature in cursive script that reads "Hugh Ricci, P.E." is written over a faint circular official seal.

HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 20th day

of February, 2004.