

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

IN THE MATTER OF APPLICATION 45736)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE MONITOR)
VALLEY HYDROGRAPHIC BASIN)
(140(B)), NYE COUNTY, NEVADA.)

RULING

#5381

GENERAL

I.

Application 45736 was filed on June 1, 1982, by Helen Wharton, to appropriate 5.4 cubic feet per second of water from an underground source for irrigation and domestic purposes in support of a Desert Land Entry. The proposed place of use is described as being 320 acres located within the E $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of Section 20, W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 21, T.9N., R.46E., M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T.9N., R.46E., M.D.B.&M.¹

FINDINGS OF FACT

I.

The applicant and her agent were notified by certified mail dated December 16, 2003, to submit additional information regarding Application 45736 to the State Engineer's office. The applicant was warned that failure to respond within 30 days would result in denial of the application. The certified letter to the applicant was returned to the Office of the State Engineer, by the U.S. Postal Service, stamped "unclaimed". The letter was re-sent to the same address by regular mail on January 7, 2004. A properly endorsed certified mail receipt from the applicant's agent was received in the Office of the State Engineer on December 22, 2003. To date, the applicant and her agent have expressed no interest in pursuing this application and have not submitted the additional information requested.¹ The State Engineer finds that the applicant and her agent were properly notified of the request for additional information regarding interest in pursuing Application 45736 and have failed to respond.

¹ File No. 45736, official records in the Office of the State Engineer.

II.

The State Engineer finds that there has been no correspondence from the applicant or her agent in regards to this application for over 21 years.¹ The State Engineer finds that it is the responsibility of the applicant or her agent 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.²

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.³

III.

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

- 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 her 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 these applications for over 21 years and the failure to submit requested information demonstrates the applicant's lack of interest in pursuing Application 45736. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

² NRS chapters 533 and 534.

³ NRS § 533.375.

⁴ NRS § 533.370(4).

RULING

Application 45736 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 18th day of

June, 2004.