

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

IN THE MATTER OF APPLICATION )  
36994 FILED TO APPROPRIATE )  
THE PUBLIC WATERS OF AN )  
UNDERGROUND SOURCE WITHIN )  
THE SUSIE CREEK AREA )  
HYDROGRAPHIC BASIN (050), )  
ELKO COUNTY, NEVADA. )

**RULING**

**#5389**

**GENERAL**

**I.**

Application 36994 was filed on March 13, 1979, by Ernest W. Johnson to appropriate 5.4 cubic feet per second of water from an underground source for irrigation purposes in support of a Desert Land Entry. The proposed place of use is described as being 320 acres located within the S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 1, N $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 12, T.33N., R.52E., M.D.B.&M., and Lot 4 of Section 6, Lot 1, Lot 2, NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 7, T.33N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 12, T.33N., R.52E., M.D.B.&M.<sup>1</sup>

**II.**

Application 36994 was timely protested by Maggie Creek Ranch, Inc. on the following grounds:<sup>1</sup>

- 1.) To grant the draft of water for this and neighboring applications for D.L.E. irrigation would work to lower the water table in the vicinity to a point which may adversely affect spring and pond stockwater sources, which protestant now enjoys.
- 2.) Protestant is sole owner of fee land in the vicinity, and is sole holder of a U.S.B.L.M. grazing lease to that public land covered by this application.

**FINDINGS OF FACT**

**I.**

The applicant and his agent were notified by certified mail dated September 23, 2003, to submit additional information regarding Application 36994 to the Office of the State Engineer. The applicant was warned that failure to respond within 30 days would

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<sup>1</sup> File No. 36994, official records in the Office of the State Engineer.

result in denial of the application. The letter to the applicant was returned to the Office of the State Engineer, by the U.S. Postal Service, stamped "Not Deliverable as Addressed, Unable to Forward" and "Attempted Not Known".<sup>1</sup> A properly endorsed certified mail receipt was received in the Office of the State Engineer from the applicant's agent on October 6, 2003.<sup>2</sup> 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 36994 and have failed to respond.

## II.

The State Engineer finds that there has been no correspondence from the applicant or his agent regarding Application 36994 for at least 22 years.<sup>1</sup> The State Engineer finds that it is the responsibility of the applicant or his 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.<sup>3</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>4</sup>

### III.

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

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<sup>2</sup> File No. 36993, official records in the Office of the State Engineer.

<sup>3</sup> NRS chapters 533 and 534.

<sup>4</sup> NRS § 533.375.

<sup>5</sup> NRS § 533.370(4).

- 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 Office of the State Engineer. The State Engineer concludes that the failure to express any interest in the application for over 22 years and failure to maintain a current address demonstrates the applicant's lack of interest in pursuing Application 36994. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

**RULING**

Application 36994 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,

  
HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 18th day of  
June, 2004.