

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

IN THE MATTER OF APPLICATION 49428 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE FISH LAKE )  
VALLEY HYDROGRAPHIC BASIN (117), )  
ESMERALDA COUNTY, NEVADA. )

**RULING**

**#5438**

**GENERAL**

**I.**

Application 49428 was filed on October 3, 1985, by Steve Vonderheide to appropriate 0.5 cubic feet per second of water from an underground source for mining and milling and domestic purposes. The proposed place of use is described as being located within the NE $\frac{1}{4}$ , W $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 36, T.1N., R.36E., M.D.B.&M. and the S $\frac{1}{2}$  S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 30, T.1N., R.37E., M.D.B.&M., NW $\frac{1}{4}$  of Section 31, T.1N., R.37E., 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 Section 36, T.1N., R.36E., M.D.B.&M.<sup>1</sup>

**II.**

Application 49428 was timely protested by D.J. and B.W. Peterson, and B.A. Walker on the following grounds:<sup>1</sup>

- 1) The site of the proposed diversion is near a [sic] the primary water source serving Fish Lake Valley which has been declared a ground water basin by the State Engineer through his order dated the 10<sup>th</sup> day of February 1978.
- 2) The removal of water from an underground source so close to existing sources & so close to the primary water supply for the declared ground-water basin would jeopardize the prior appropriation rights of the protestant.
- 3) See denial of Application 33231 or 33228 Oct. 5, 1978

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<sup>1</sup> File No. 48428, official records in the Office of the State Engineer.

## FINDINGS OF FACT

### I.

On May 18, 1990, the applicant was notified that before further consideration could be given towards the issuance of any permit, additional justification data and information concerning the proposed mining operation was required. The applicant responded by letter dated June 4, 1990, and provided information on his project. In particular, the applicant indicated that the plan had changed since the application was filed and the applicant no longer intended to have a milling operation that required water. Water needs would be limited to domestic uses and dust control and abatement. A review of the application file indicates that this was the last correspondence from the applicant. There is no record in the file of any subsequent meetings; no amendments and no change applications to Application 49428 have been filed.<sup>1</sup>

The State Engineer finds that there has been no correspondence from the applicant or his agent in regards to this application for over 14 years. The State Engineer finds that sufficient time has passed for the applicant to decide on the scope of his new project and to amend or file a change application to accommodate the new project.

### II.

The applicant and his agent were notified by certified mail dated April 6, 2004, to submit additional information regarding interest in pursuing Application 49428 to the State Engineer's office. The applicant was warned that failure to respond within 60 days might result in denial of the application. Properly endorsed certified mail receipts were received in the Office of the State Engineer, from the applicant and from the applicant's agent on April 9 and April 12, 2004, respectively. To date, the applicant and his agent have expressed no interest in pursuing this application and have not submitted the additional information requested.<sup>1</sup> The State Engineer finds that the applicant and his agent were properly notified of the request for additional information regarding interest in pursuing Application 49428 and have failed to respond.

## 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 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 these applications for over 14 years and the failure to submit requested information demonstrates the applicant's lack of interest in pursuing Application 49428. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

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<sup>2</sup> NRS chapters 533 and 534.

<sup>3</sup> NRS § 533.375.

<sup>4</sup> NRS § 533.370(4).

**RULING**

Application 49428 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.". The signature is written in black ink and is positioned above the printed name and title.

HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 22nd day of  
October, 2004.