

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

IN THE MATTER OF APPLICATION )  
55736 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF MAMMOTH )  
SPRING WITHIN THE ORIENTAL )  
WASH HYDROGRAPHIC BASIN (232), )  
ESMERALDA COUNTY, NEVADA. )

**RULING**  
**#5955**

**GENERAL**

**I.**

Application 55736 was filed on February 5, 1991, by Vernon H. and Katina W. Cook to appropriate 0.1547 cubic foot per second of water from Mammoth Spring. The proposed manner of use and place of use is for commercial purposes within the SE¼ of Section 4, T.7S., R.41½E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 20, T.6S., R.40E., M.D.B.&M.<sup>1</sup>

**II.**

Application 55736 was timely protested by the United States Department of Interior, National Park Service and Lida Livestock on grounds that are not to be considered in this ruling.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

The Nevada Division of Water Resources (NDWR) is currently addressing protested water right applications that have been pending for significant periods of time. Among this group of filings is Application 55736, which was filed to appropriate water from Mammoth Spring for a proposed water bottling plant located in the town of Goldpoint.

The records of the Office of the State Engineer indicate that the original Applicants remain the owner of record of this application and have retained the address found on their water right application. The record also indicates that the last correspondence received from the Applicants was received by the State Engineer's office on December 6, 1991. Given this long period of inactivity, the Cooks, in addition to their agent, were requested by letter dated December 20, 2007, to provide evidence of any continued interest that they may have in completing the proposed commercial operation. On January 7, 2008, the letter to the Applicants was returned to the NDWR

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<sup>1</sup> File No. 55736, official records in the office of the State Engineer.

with the notation stamped by the United States Postal Service, "Return to Sender Not Deliverable As Addressed." A response, in the form of a letter, was received from George W. Quinn, on behalf of Katina Cook, who advised the NDWR, that Ms. Cook still intended to pursue the application to completion.

Having responded in a positive manner, the Applicant was then requested on May 9, 2008, to provide a more detailed accounting of the progress that had been attained in developing the bottled water plant. The Applicant was allowed sixty days to provide answers to five specific questions, with the condition that Application 55736 would be denied if a response was not received in a timely manner. An identical letter was sent to George W. Quinn. After the expiration of the sixty day time period, it was determined that a response had not been received. The State Engineer finds that the Applicants and their agent have failed to submit the additional information requested by the NDWR; therefore, Application 55736 can be considered for denial.

### **CONCLUSIONS**

#### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>2</sup>

#### **II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>3</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

#### **III.**

On two recent occasions, the Applicants have been requested to provide the State Engineer with additional information relating to Application 55736. Both requests were made with the understanding that a failure to respond in a timely manner would represent a lack of interest on the Applicants' part in pursuing the subject application. To this date, the Applicants and their agent have failed to respond to the most recent request. The State Engineer concludes that the approval of

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<sup>2</sup> NRS chapter 533.

<sup>3</sup> NRS § 533.370(5).

an application that the Applicants have no interest in pursuing would threaten to prove detrimental to the public interest.

**RULING**

Application 55736 is hereby denied on the grounds that the approval of the application would threaten to prove detrimental to the public interest.

Respectfully submitted,



FOR TRACY TAYLOR, P.E.  
State Engineer

TT/MB/jm

Dated this 12<sup>th</sup> day of

February, 2009.