

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

IN THE MATTER OF APPLICATION 56957)
FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF)
WATERS PREVIOUSLY APPROPRIATED)
FROM AN UNDERGROUND SOURCE WITHIN)
LONG VALLEY GROUNDWATER BASIN)
(100A), WASHOE COUNTY, NEVADA.)

RULING

4309

GENERAL

I.

Application 56957 was filed on November 25, 1991, by Reno Park Water Company to change the point of diversion and place of use of water previously appropriated under Permit 49840.¹ Under Application 56957, the applicant proposed to import water from Long Valley to Cold Spring Valley. The records of the State Engineer indicate that the application was filed in furtherance of an agreement with Phoenix Development and Investment.

II.

Application 56957 was timely protested by the residents of Cold Spring Valley/Cold Spring Review Board on the following grounds:

The possible impacts of water importation from the Long Valley Basin to the Cold Spring Valley Basin. Those impacts may include elevated water table resulting in septic system failures, structural damage to homes and business foundations, as well as degradation of the Cold Spring Valley aquifer.¹

FINDINGS OF FACT

I.

On January 22, 1996, the State Engineer sent notice of a hearing before representatives of the Office of the State Engineer set for March 13, 1996, in the matter of protested Application 56957. Application 56957 requested permission to change the point of diversion and place of use of waters under Permit 49840 held in

¹ File No. 56957, official records of the Office of the State Engineer.

the name of Gloria Bergendahl. The State Engineer finds that nothing in the records of the State Engineer indicates any ownership interest by the applicant in any portion of the water right which forms the basis of the change Application 49840.

II.

After notice of the hearing was sent, staff of the Office of the State Engineer reviewed documentation in the file regarding the base permit (Permit 49840). Upon this review, it became apparent to the State Engineer that the plans originally envisioned under Application 56957 no longer exist. Specifically, on January 5, 1995, Gloria Bergendahl's agent, William Nork, filed a request for extension of time for filing proof of beneficial use of the waters under the base permit, Permit 49840.² In the request, the permittee noted that the time expired under the various agreements with Phoenix Development; thus, the permittee was now committed to putting the water to beneficial use in Long Valley since "the demise of the plans set forth in Change Application No. 56957 and the agreements with Phoenix and Reno." The State Engineer finds that on the basis of the statement made by the holder of the base water right, it appears to the State Engineer that the project envisioned under Permit 56957 was no longer viable.

III.

On September 12, 1995, Gloria Bergendahl, through her agent William Nork, filed a new request for extension of time for filing proof of beneficial use of the waters under the base permit, Permit 49840. This extension of time noted that the permittee has entered into a joint venture for development of the Long Valley property with the Priske-Jones Company under the name of Sierra Vista.² The State Engineer finds that, based on statements made by the

² File No. 49840, official records of the Office of the State Engineer.

permittee in her request for extension of time for filing proof of beneficial use under Permit 49840, the project envisioned under Application 56957 no longer exists.

IV.

On the basis of the base permittee's statements, the State Engineer had a member of the hearing section of the Division of Water Resources contact many of the parties involved with regard to Application 56957 and Permit 49840 in an attempt to determine if any project still remained which supported change Application 56957 or if use of the waters was being pursued under Permit 49840. The State Engineer finds that from these contacts it became apparent that no one knew if a project existed in support of Application 56957 as no person contacted could identify any specific project which supported Application 56957.

V.

In reliance upon the statements made, by letter dated February 26, 1996, sent by facsimile to the applicant Reno Park Water Company and its agent, and sent as a courtesy to the agent of the holder of the base permit (Permit 49840), the State Engineer informed the applicant and its agent of record that it had become apparent that no one was prepared to identify the specific project which supports Application 56957. Thus, the State Engineer required the applicant to submit on or before March 6, 1996, additional information concerning the plans for use of the water as envisioned under Application 56957, and informed the applicant that failure to supply said information by the March 6, 1996, deadline would result in the cancellation of the hearing scheduled for March 13, 1996, and denial of Application 56957. The State Engineer finds that no information was received from the applicant in response to the request for information concerning the use of water as envisioned under the application.¹

VI.

By facsimile received March 6, 1996, William Nork, agent for Gloria Bergendahl, the owner of record of Permit 49840, asked that the hearing scheduled for March 13, 1996, be continued. The State Engineer finds that the applicant under Application 56957 is Reno Park Water Company, not Gloria Bergendahl, and nothing in the records of the State Engineer indicates that Mr. Nork is authorized to act on behalf of Reno Park Water Company.

VII.

The applicant is required by law to provide such satisfactory proof of his intention in good faith to construct the necessary works and has the financial ability to put the water to beneficial use.³ The State Engineer finds that no such proof exists.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

Before either approving or rejecting an application, the State Engineer may require such additional information from the current owner of record as will enable him to properly guard the public interest.⁵

III.

The State Engineer concludes that the applicant has been non-responsive in providing satisfactory proof that he intends to construct the necessary works and can beneficially use the water under change Application 56957.

³ NRS 533.370(1)(c).

⁴ NRS Chapters 533 and 534.

⁵ NRS 533.375.

IV.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁶

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

V.

The applicant has failed to submit the requested information to the State Engineer's Office. The State Engineer concludes that without this additional information sufficient information is not available to properly guard the public interest.

VI.

While Mr. Nork is the agent of record for Gloria Bergendahl, the holder of the base permit which supports change Application 56957, nothing in the records of the State Engineer indicates he has any authority to act on behalf of the applicant Reno Park Water Company. The State Engineer concludes that Mr. Nork has no authority to request a continuance on behalf of the applicant.

VII.

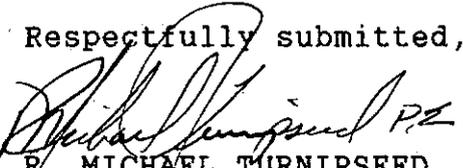
The State Engineer concludes that the failure of the applicant or its agent to file the information requested as to the project envisioned under Application 56957 is sufficient evidence to conclude that no project exists today under the application.

⁶ NRS Chapter 533.370(3).

RULING

The hearing scheduled for March 13, 1996, is hereby cancelled and Application 56957 is hereby denied on the grounds that the applicant has not submitted the data and information requested by the State Engineer's Office, and that without this information granting of the application would be detrimental to the public interest.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/ab

Dated this 8th day of
March, 1996.