

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

IN THE MATTER OF APPLICATION 60598)
FILED TO CHANGE THE POINT OF)
DIVERSION OF THE UNDERGROUND WATER)
PREVIOUSLY APPROPRIATED UNDER)
PERMIT 44454, CERTIFICATE 11789)
WITHIN THE BIG SMOKEY VALLEY-)
NORTHERN PART HYDROGRAPHIC BASIN)
(137A), NYE COUNTY, NEVADA.)

RULING

#5107

GENERAL

I.

Application 60598 was filed on October 21, 1994, by Tonopah Public Utilities to change the point of diversion of 0.18 cubic feet per second of the underground water previously appropriated under Permit 44454, Certificate 11789, for municipal use within the S½ NW¼, N½ SW¼, SW¼ SW¼ of Section 13, T.3N., R.42E., M.D.B.&M.; Sections 25, 26, 27, 35, 36, the E½ E½ and a portion of the NW¼ NE¼ of Section 28, the N½ N½ and portions of the S½ NE¼ and the NE¼ SE¼ of Section 34, T.3N., R.42E., M.D.B.&M.; Sections 1 and 2, T.2N., R.42E., M.D.B.&M.; Sections 30 and 31, T.3N., R.43E., M.D.B.&M.

FINDINGS OF FACT

I.

A letter dated November 27, 2000, was sent by regular mail to the applicant and its agent requesting that additional information be provided to the Office of the State Engineer in order to consider Application 60598. The applicant was allowed forty-five days from the date of the letter to submit the requested information to the State Engineer's office with the caution that their failure to timely do so would result in the denial of Application 60598. The State Engineer finds that no response was received to this request.

II.

On April 11, 2001, a letter was sent by certified mail to the applicant, and a copy by regular mail to its agent, reiterating the previous letter of November 27, 2000. Again, the applicant was allowed forty-five days from the date of the letter to submit the requested information. A properly endorsed receipt for the certified mailing to the applicant was timely received in the Office of the State Engineer. The State Engineer finds that no response was received to this request.

III.

On December 28, 2001, a letter was sent by certified mail to both the applicant and its agent, reiterating the previous letters of November 27, 2000, and April 11, 2001. The applicant was allowed fifteen days from the date of the letter to submit the requested information. To this date, no response to the State Engineer's request for information has been received in the State Engineer's office. Properly endorsed receipts for the certified mailings to the applicant and its agent were timely received in the Office of the State Engineer. The State Engineer finds that the failure of the applicant or its agent to submit the necessary information allows Application 60598 to be considered for denial.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:²

A. the proposed use or change conflicts with existing rights;

¹ NRS chapters 533 and 534.

² NRS § 533.370(3).

- B. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- C. the proposed use or change threatens to prove detrimental to the public interest.

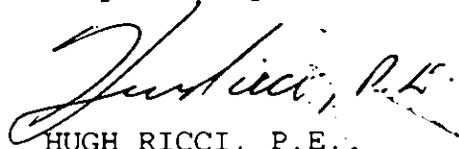
III.

The State Engineer concludes that the applicant and its agent have failed to provide evidence of a continued interest in Application 60598; therefore, said application must be denied.

RULING

Application 60598 is hereby denied on the grounds that the applicant and its agent have failed to provide evidence of a continued interest in pursuing said application, and without this information granting the application would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HC/BM/jm

Dated this 26th day of
February, 2002.