

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

IN THE MATTER OF APPLICATION 60041)
FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF A)
PORTION OF THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 21475,)
CERTIFICATE 6878, WITHIN THE DAYTON)
VALLEY HYDROGRAPHIC BASIN (103),)
LYON COUNTY, NEVADA.)

RULING

#5370

GENERAL

I.

Application 60041 was filed on May 4, 1994, by Ralph C. and Iva M. Montelius, to change the point of diversion and place of use of a portion of Permit 21475, Certificate 6878, being 0.0915 cubic feet per second of water from an underground source. The proposed and existing manner of use is for irrigation and domestic purposes. The place of use is described as being 5 acres located within the NW¹/₄ NW¹/₄ of Section 9, T.16N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¹/₄ NW¹/₄ of said Section 9. The existing point of diversion is described as being located within the NW¹/₄ NE¹/₄ of said Section 9.¹

FINDINGS OF FACT

I.

By letter dated September 18, 1995, the applicants' agent requested that the State Engineer withhold action on Application 60041. The letter indicated that the applicants or their agent would notify the Office of the State Engineer when they were ready to proceed. The State Engineer withheld action on the application for over 5½ years, while waiting for the applicants or their agent to indicate their desire to proceed with the application. On March 21, 2001, the applicants and their agent were contacted by certified mail and requested to submit additional information regarding their interest in pursuing Application 60041. The applicants and their agent were warned that failure to

¹ File No. 60041, official records in the Office of the State Engineer.

respond within 60 days would result in denial of the application. The certified letter to the applicants was returned to the Office of the State Engineer, by the U.S. Postal Service, stamped "Unable to Forward". A properly endorsed certified mail receipt was received in the Office of the State Engineer from the applicants' agent. Neither the applicants or their agent responded to the March 21, 2001, notice.

On December 12, 2003, the applicants and their agent were again notified by certified mail regarding their interest in pursuing Application 60041. The applicants and their agent were warned that failure to respond within 30 days would result in denial of the application. The certified letter to the applicants was returned to the Office of the State Engineer, by the U.S. Postal Service, stamped "Unable to Forward". A properly endorsed certified mail receipt was received in the Office of the State Engineer on December 16, 2003, from the applicants' agent. To date, the applicants and their agent have expressed no interest in pursuing this application.¹

It has been over eight (8) years since the applicants' agent requested to withhold action and over two (2) years since the first certified notice. The State Engineer finds that sufficient time has past for the applicants and their agent to have decided whether or not to pursue this application. The State Engineer finds that the applicants and their agent were properly notified on two separate occasions regarding interest in pursuing Application 60041 and failed to respond.

CONCLUSIONS

I.

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

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.³

III.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:⁴

² NRS chapters 533 and 534.

³ NRS § 533.375.

⁴ NRS § 533.370(4).

- 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 applicants and their 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 the application demonstrates the applicants' lack of interest in pursuing Application 60041. The State Engineer concludes it would threaten to prove detrimental to the public interest to withhold action on an application indefinitely, where the applicants and their agent have expressed no interest in pursuing the application.

RULING

Application 60041 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 8th day of
June, 2004.