

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

IN THE MATTER OF APPLICATION)
57982 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF THE BIG)
SMOKY VALLEY-NORTHERN PART)
HYDROGRAPHIC BASIN (137b),)
NYE COUNTY, NEVADA.)

RULING

#5386

GENERAL

I.

Application 57982 was filed on August 19, 1992, by George and Linda Manley to appropriate 3.6 cubic feet per second of water from an underground source for irrigation purposes within the SE $\frac{1}{4}$ of Section 7, and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 18, T.13N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located in the SW $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 7, T.13N., R.43E., M.D.B.&M.¹

FINDINGS OF FACT

I.

On January 9, 2003, a letter was sent by certified mail to the applicants and their agent requesting an indication of the applicants' intention to continue to pursue Application 57982. The applicants were asked to respond in writing, stating their desire to pursue the application, or to withdraw the application if they were no longer interested. Properly endorsed receipts for the certified mailings were timely received in the Office of the State Engineer.¹

On February 14, 2003, Linda Manley called the Office of the State Engineer to provide an updated mailing address, phone number, and facsimile number and to express continued

¹ File No. 57982 official records in the Office of the State Engineer.

interest in pursuing Application 57982. Mrs. Manley also stated that Mr. George Manley is deceased. According to an office memorandum dated February 14, 2003, Mrs. Manley was mailed the appropriate assignment forms and procedural directions for updating ownership.¹

A second letter was sent on March 5, 2003, by certified mail to the applicant requesting additional necessary action on the part of the applicant before the approval of Application 57982 would be considered. Specifically, the applicant was asked to withdraw land from the place of use of Application 57982 that records show as public land administered by the U.S.D.I. Bureau of Land Management. Also, the applicant was again sent the proper forms for updating ownership of the water rights. A properly endorsed receipt for the certified mailing was timely received in the Office of the State Engineer on March 10, 2003.¹

A third letter was sent on May 8, 2003, by certified mail to the applicant requesting the same action to be taken. The applicant was given 30 days to comply with this request, with the understanding that failure to comply would be cause to deny Application 57982. A properly endorsed receipt for the certified mailing was timely received in the Office of the State Engineer on May 12, 2003.¹

On May 27, 2003, a fourth letter was sent by certified mail to the applicant again requesting that the applicant withdraw a portion of the place of use and update ownership. The applicant was given 60 days to comply with this request, with the understanding that failure to comply would be cause to deny Application 57982. A properly endorsed receipt for the certified mailing was timely received in the Office of the State Engineer on June 5, 2003.¹

To date, the applicant has not made the necessary withdrawals from the proposed place of use and has not submitted the documents necessary to update ownership, as requested by certified letters dated January 9, February 14, May 8, and May 27, 2003. The State Engineer finds the applicant has had sufficient time and notices to correct the deficiencies in Application 57982, and has failed to do so. The State Engineer finds that the failure of the applicant to submit the requested information allows Application 57982 to be considered for denial.

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 an application to appropriate the public waters where: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.

² NRS chapters 533 and 534.

³ NRS § 533.375.

⁴ NRS § 533.370(4).

IV.

The State Engineer concludes that the applicant, by her inaction, has failed to correct the deficiencies in Application 57982; therefore, the application must be denied.

RULING

Application 57982 is hereby denied on the grounds that the applicant has failed to provide the information necessary to correct the deficiencies in the 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

HR/BM/jm

Dated this 18th day of
June, 2004.