

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

IN THE MATTER OF APPLICATION 37154 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE NEWARK VALLEY )  
HYDROGRAPHIC BASIN (154), WHITE )  
PINE COUNTY, NEVADA. )

**RULING**  
**# 5611**

**GENERAL**

**I.**

Application 37154 was filed on March 23, 1979, by Marilyn Bryan to appropriate 5.4 cubic feet per second of underground water from the Newark Valley Hydrographic Basin for the irrigation of 320 acres of land within the W $\frac{1}{2}$  of Section 7, T.17N., R.55E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, T.17N., R.55E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

Application 37154 was filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of the applicant's respective Desert Land Entry Application, United States Department of the Interior, Bureau of Land Management (BLM) Case #NVN 022314. On March 4, 1994, the BLM contacted the Office of the State Engineer by letter requesting the status of the applicant's water right Application 37154. By return letter on April 27, 1994, the Office of the State Engineer told the BLM that Application 37154 would not be approved due to spacing criteria. On May 31, 2005, the Ely Field Office of the BLM was contacted by telephone to provide information to the Office of the State Engineer relating to the current status of the applicant's Desert Land Entry Application #NVN 022314. The BLM mailed copies of the applicant's Serial

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<sup>1</sup> File No. 37154, official records in the Office of the State Engineer.

Register Page, received June 6, 2005, which indicated that the applicant's Desert Land Entry fees were refunded and the case closed by the BLM on June 10, 1994.<sup>1</sup> The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 37154 has been terminated by the proper governing federal agency.

**II.**

A water right application is filed to request an appropriation of water to be used for a specific purpose within a well defined place of use, which is represented under Application 37154 as the irrigation of a 320 acre parcel of land, which was to be removed from federal jurisdiction by the approval of the applicant's respective Desert Land Entry Application #NVN 022314. The Desert Land Entry application filed by the applicant was rejected by the BLM with the ownership of the land requested for removal retained by the federal government.<sup>1</sup> The State Engineer finds that the purpose for which Application 37154 was filed no longer exists; therefore, the necessity to divert water as proposed under the subject application has ceased.

**III.**

On October 26, 2005, a certified letter was sent to the applicant and agent requesting additional information be provided to the Office of the State Engineer. The applicant was warned that failure to respond within thirty (30) days from the date of the letter would result in denial of the application. The certified letter to the applicant was returned by the U.S. Postal Service as unclaimed. This letter was re-sent by regular mail on November 28, 2005. A properly endorsed certified mail receipt from the applicant's agent was received in the Office of the State Engineer on October 31, 2005. To date, there has been no response from the applicant or agent to the request for additional information.<sup>1</sup>

The State Engineer finds that the applicant and agent were properly notified of the request for additional information and have failed to respond.

### CONCLUSIONS

#### I.

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

#### 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.<sup>3</sup>

#### III.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</sup>

- 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 State Engineer concludes the BLM's closure of the subject Desert Land Entry application removes the purpose for which Application 37154 was filed and, that to approve a water right permit for a project that no longer exists would threaten to prove detrimental to the public interest.

#### V.

The applicant and agent were properly notified of the requirement for additional information and have failed to submit

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<sup>2</sup> NRS chapters 533 and 534.

<sup>3</sup> NRS § 533.375.

<sup>4</sup> NRS § 533.370(5).

the information to the State Engineer's office. The State Engineer concludes that the failure to express any interest in the application and the failure to submit additional information demonstrates the applicant's lack of interest in pursuing Application 37154.

RULING

Application 37154 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



Hugh Ricci, P.E.  
State Engineer

HR/WHR/jm

Dated this 21st day of  
April, 2006.