

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

IN THE MATTER OF APPLICATION 52720)
FILED TO CHANGE THE MANNER OF)
USE OF A PORTION OF THE PUBLIC)
WATERS PREVIOUSLY APPROPRIATED)
UNDER PERMIT 34647, CERTIFICATE)
12451, FROM AN UNDERGROUND)
SOURCE WITHIN THE ELKO SEGMENT)
HYDROGRAPHIC BASIN (49), ELKO)
COUNTY, NEVADA.)

RULING

#5631

GENERAL

I.

Application 52720 was filed on November 21, 1988, by Nevada Green to change the manner of use of 0.18 cubic feet per second (cfs) of water previously appropriated under Permit 34647, Certificate 12451, from an underground source. The existing manner of use is for commercial purposes and the proposed manner of use is for quasi-municipal purposes. The proposed place of use is unchanged and is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T.34N., R.55E., M.D.B.&M. The proposed point of diversion is unchanged and is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 21.¹

FINDINGS OF FACT

I.

The applicant and agent were notified by certified mail dated October 29, 2003, to submit additional information regarding Application 52720 to the State Engineer's office. The applicant was warned that failure to respond within 30 days would result in denial of the application. The letter to the applicant was returned to the Office of the State Engineer by the U.S. Postal Service marked "Attempted - Not Known". A properly endorsed certified mail receipt was received from the applicant's agent on November 4, 2003. To date, there has been no response to the request for additional information from either the applicant or agent.¹

¹ File No. 52720, official records in the Office of the State Engineer.

The State Engineer finds that the applicant and agent were properly notified at their respective addresses of record of the request for additional information regarding Application 52720 and failed to provide the requested information.

II.

The State Engineer finds that there has been no correspondence from the applicants or their agent in regards to this application for over 5 years.¹ The State Engineer finds that it is the responsibility of the applicant or agent to keep this office informed of a current mailing address.

III.

Permit 34647 was approved for commercial purposes at a diversion rate of 0.25 cfs and a duty not to exceed 58.98 million gallons annually. The permit terms state that the amount of water granted is only a temporary allowance and the final quantity of water will be dependent upon the amount of water actually placed to beneficial use. On January 30, 1990, the applicant's agent submitted a proof of application of water to beneficial use form. Based on the information supplied on the proof of beneficial use form and a subsequent field investigation by the Office of the State Engineer, a certificate of appropriation of water was issued, June 13, 1990. The certificate reduced the diversion rate and duty of water. Under the certificate of appropriation, the diversion rate is 0.07 cfs and the duty is not to exceed 2.373 million gallons annually.²

Application 52720 was filed to change 0.18 cfs of water under Permit 34647, Certificate 12451. As noted above, there is only 0.07 cfs available for change under Permit 34647, Certificate 12451.

The State Engineer finds that Application 52720 seeks to change a greater quantity of water than is currently available under Permit 34647, Certificate 12451.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

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.⁴

² File No. 34647, official records in the Office of the State Engineer.

³ NRS chapters 533 and 534.

⁴ NRS § 533.375.

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁵

- 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 applicant and 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 submit the requested information and failure to maintain a current address demonstrates the applicant's lack of interest in pursuing Application 52720. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

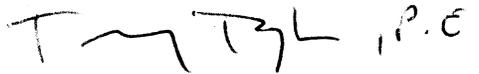
V.

The State Engineer concludes that Application 52720 seeks to change a greater quantity of water than is currently available under Permit 34647, Certificate 12451; therefore, Application 52720 is subject to denial.

RULING

Application 52720 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 31st day of
July 2006
_____.

⁵ NRS § 533.370(5).