

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

IN THE MATTER OF APPLICATION 21402)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF INDIAN CREEK (AKA)
McNETT CREEK) WITHIN THE FISH)
LAKE VALLEY HYDROGRAPHIC BASIN)
(117), ESMERALDA COUNTY, NEVADA.)

RULING
5582

GENERAL

I.

Application 21402 was filed on July 23, 1963, by Frank Seminario, and later assigned to Harold R. and Barbara A. Eade, to appropriate 10.0 cubic feet per second of water from Indian Creek (a.k.a. McNett Creek) for irrigation and domestic purposes. The proposed place of use is described as being located within a portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 2, T.2S., R.34E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 2.¹

II.

Application 21402 was timely protested by Leslie W. Carlson on the following grounds:¹

That I have previously filed applications to appropriate water on this creek, and to date have not been granted permission to appropriate this water on this creek. That under the present adjudication[sic] proceedings on Indian Creek this Applicant has received all the water he is entitled to. That for years this Applicant has taken entire stream and has misused stream. He does not and has not made proper use of water under the Law

FINDINGS OF FACT

I.

The applicants and their agent were notified by certified mail dated February 9, 2005, to submit additional information regarding Application 21402 to the State Engineer's office. The applicants were warned that failure to respond within 30 days would result in denial of the application. The applicants' certified letter was returned to

¹ File No. 21402, official records in the Office of the State Engineer.

the Office of the State Engineer, as the U.S. Postal Service was unable to deliver the letter as addressed. A certified mail receipt was received in the Office of the State Engineer from the letter sent to the applicants' agent.¹

Although the agent did not respond directly to the notice, the agent did copy the Office of the State Engineer on a letter dated February 17, 2005, sent to the Arlemont Ranch, a possible successor to Application 21402. In the letter, the agent indicated that most of his files were destroyed in the 1997 flood in Carson City and the agent cannot remember whether the upper McNett property, where Application 21402 is located, was purchased with the Arlemont Ranch. The agent also forwarded a copy of the certified letter to the Arlemont Ranch in case they had any interest in pursuing this matter.¹

The State Engineer finds that the applicants and their agent were properly notified of the request for additional information regarding Application 21402 and failed to provide the requested information. The State Engineer further finds that the Arlemont Ranch, a possible successor to Application 21402, has also failed to provide any of the requested information or show any interest in pursuing the application.

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 an application to appropriate the public water where:⁴

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

² NRS chapter 533.

³ NRS § 533.375.

⁴ NRS § 533.370(4).

- 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.

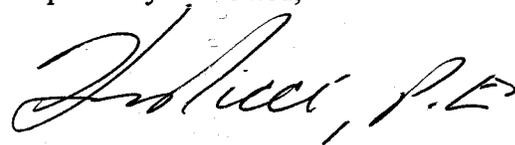
IV.

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 submit the requested information demonstrates the applicants' lack of interest in pursuing Application 21402. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

RULING

Application 21402 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 10th day of
March, 2006.