

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

IN THE MATTER OF APPLICATION 53899)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN WHITE RIVER VALLEY GROUND)
WATER BASIN (207), WHITE PINE)
COUNTY, NEVADA.)

RULING

4284

GENERAL

I.

Application 53899 was filed on September 28, 1989, by Dale R. Atherton to appropriate 1.5 cubic feet per second of water from an underground source for commercial and domestic purposes for use within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T.13N., R.61E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T.13N., R.61E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Applicant's agent, Richard E. Fonger, was notified by first class mail dated February 15, 1990, to submit additional information regarding Application 53899.¹ The State Engineer finds no response was received to the request for additional information.

II.

The applicant and his agent were again notified by first class mail dated August 10, 1995, to submit additional information regarding Application 53899.¹ The letter addressed to Dale R. Atherton, Applicant, was returned by the United States Postal Service on August 16, 1995, marked "Unclaimed, forward expired".¹ The State Engineer finds no response was received to this request for additional information.

¹ File No. 53899, official records in the Office of the State Engineer.

III.

On October 27, 1995, a representative of the State Engineer contacted Richard E. Fonger, Applicant's agent, by telephone regarding the State Engineer's request for additional information. The agent responded that he could not provide the additional information because he did not have the current address or phone number of the applicant.¹

The Applicant was again notified by certified letter dated December 8, 1995, to submit the additional information regarding Application 53899.¹ The notice indicated that if the information was not received within 30 days the application would be cancelled. This letter was returned by the United States Postal Service on December 14, 1994, marked "Unclaimed, forward expired".¹

The State Engineer finds that it is the responsibility of the applicant or the successor in interest to keep this office informed of a current mailing address.

IV.

The State Engineer finds that the applicant and his agent were properly notified of the request for additional information and failed to respond.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction over 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 from the current owner of record as will enable him to properly guard the public interest.³

² NRS Chapters 533 and 534.

³ NRS 533.375.

III.

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

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

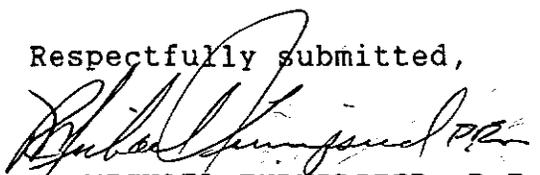
IV.

The applicant has failed to submit the information requested to the State Engineer's Office. The State Engineer concludes that without the additional data sufficient information is not available for the State Engineer to properly guard the public interest.

RULING

Application 53899 is hereby denied on the grounds that the applicant has not submitted the data and information requested by the State Engineer's Office, and that without this information granting of the application would be detrimental to the public interest.

Respectfully submitted,


E. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/RAD/ab

Dated this 17th day of
January, 1996.

⁴ NRS 533.370(3).