

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

IN THE MATTER OF APPLICATION 55844)
FILED TO CHANGE THE POINT OF)
DIVERSION, PLACE AND MANNER OF USE)
OF THE PUBLIC WATERS OF POCAHANTAS)
SPRING PREVIOUSLY APPROPRIATED)
UNDER PERMIT 29812, CERTIFICATE)
10607, WITHIN THE CLAYTON VALLEY)
HYDROGRAPHIC BASIN (143), ESMERALDA)
COUNTY, NEVADA.)

RULING

5120

GENERAL

I.

Application 55844 was filed on February 14, 1991, by Steelco Development Corporation to change the point of diversion, place and manner of use of 0.01 cubic feet per second of the public waters of Pocahantas Spring previously appropriated under Permit 29812, Certificate 10607. The proposed use is for quasi-municipal purposes within the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 5, T.5S., R.40E., M.D.B.&M. The proposed point of diversion is described as being located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T.5S., R.40E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Application 55844 was timely protested on July 24, 1991, by Jack Vogt on the grounds that there is no unappropriated water on the source.

II.

A Notice of Hearing, dated May 26, 1993, was sent by certified mail to the applicant and protestant requesting their presence at a public hearing on June 14, 1993, in Las Vegas, Nevada in order to consider the protest of Application of 55844.

¹ File no. 55844, official records in the Office of the State Engineer.

A properly endorsed receipt for the certified mailing to the protestant was timely received in the Office of the State Engineer. The certified mailing to the applicant was returned as unclaimed by the U.S. Postal Service to the Office of the State Engineer. The public hearing scheduled for June 14, 1993, did not constitute.¹

II.

On October 18, 2001, a letter was sent by certified mail to the applicant requesting an indication, in writing, of the applicant's intention to continue to pursue Application 55844. The certified mailing to the applicant was returned as unclaimed by the U.S. Postal Service to the Office of the State Engineer. A certified copy of the letter was sent to the protestant and a copy was sent to the agent via regular U.S. mail.¹ The State Engineer finds that the applicant has been properly noticed of the need to provide evidence of continued interest in the subject application.

III.

To this date, no response to the State Engineer's request for information has been received. The State Engineer finds that the failure of the applicant to maintain a current mailing address on file in the State Engineer's office and to provide written evidence of continued interest in completing Application 55844 allows it 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.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:³

² NRS chapters 533 and 534.

³ NRS § 533.370(3).

- A. the proposed use or change conflicts with existing rights;
- B. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- C. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the applicant and its agent have failed to provide evidence of a continued interest in Application 55844; therefore, said application must be denied.

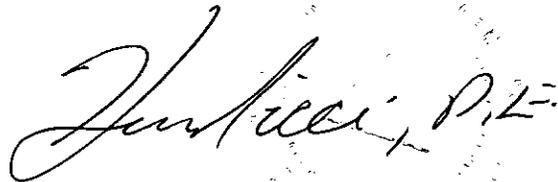
IV.

The State Engineer concludes that the approval of an application in which the applicant has no intention of pursuing would threaten to prove detrimental to the public interest.

RULING

Application 55844 is hereby denied on the grounds that the applicant and its agent have failed to provide evidence of a continued interest in pursuing said 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 23rd day of
April, 2002.