

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

IN THE MATTER OF APPLICATION 52394 )  
FILED TO CHANGE A PORTION OF THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE PREVIOUSLY APPROPRIATED )  
UNDER PERMIT 21761, CERTIFICATE )  
7253, WITHIN THE PARADISE VALLEY )  
HYDROGRAPHIC BASIN (69), HUMBOLDT )  
COUNTY, NEVADA. )

RULING

#5183

GENERAL

I.

Application 52394 was filed on August 9, 1988, by Donald W. Statter to change 0.4194 cubic feet per second of water from an underground source previously appropriated under Permit 21761, Certificate 7253. The proposed manner of use and place of use is for irrigation purposes described within the S $\frac{1}{2}$  S $\frac{1}{2}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$  and the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 12, T.39N., R.38E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 12, T.39N., R.38E., M.D.B.&M.<sup>1</sup>

FINDINGS OF FACT

I.

Every water right application that is accepted for filing within the Office of the State Engineer must state the applicant's name and address. Application 52394 was filed by Donald W. Statter with an address of Star Route Box 56, Winnemucca, Nevada 89445. An examination of the correspondence found within the application file maintained under Permit 52394 identifies one additional address for Donald W. Statter at Star Route Box 78, Winnemucca, Nevada 89445.<sup>1</sup> No transfers of title or requests for changes of address have been submitted to the Office of the State Engineer in regard to Application 52394; therefore, the State

<sup>1</sup> File No. 52394, official records in the Office of the State Engineer.

Engineer finds that the owner and address of record remain unchanged from the information contained within the original application.

**II.**

Three letters were sent out requesting further information by the applicant before proceeding. The first and second letters were sent on August 15, 1989, and September 14, 1989, respectively. There is no indication of any response to these letters by the applicant or his agent. The third letter was sent by certified mail dated June 26, 2002, in which the applicant was requested by the Office of the State Engineer to submit written evidence of a continued interest in Application 52394. The applicant was also advised that a response to this request must be received in the Office of the State Engineer within thirty days from the date of the letter. The applicant was also advised that a failure to timely respond would result in a possible denial of Application 52394. Both of the envelopes for the State Engineer's certified mailing to the applicant's two addresses were returned by the U.S. Postal Service to the Office of the State Engineer indicating "Attempted Not Known" and "Insufficient Address". The only noticed party who signed his certified notice was the applicant's agent, Charles Armuth Jr., who called to inform this office that he had no current interest in the subject application. He also advised this office that the only person he knew who might have a continued interest in this matter was Peter Breitrick.<sup>1</sup> On August 15, 2002, a letter was sent to Mr. Breitrick accompanied with a copy of the June 26, 2002, letter asking if he had any interest in the subject application and to respond within 30 days from the date of the letter. Consequently, no response to the August 15, 2002, letter has ever been received from Peter Breitrick.<sup>1</sup> The State Engineer finds that the applicant has been properly noticed of the need to provide written evidence of a

continued interest in the subject application, but has failed to do so; therefore, Application 52394 can be considered for denial.

### CONCLUSIONS

#### I.

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

#### II.

The State Engineer is prohibited by law from granting a permit for an application to change the public waters where:<sup>3</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.

#### III.

The applicant has been requested to provide the State Engineer with additional information relating to Application 52394. This request was made with the understanding that a failure to respond in a timely manner would represent a lack of interest on the applicant's part in pursuing the subject application. To this date, no response regarding this matter has been received in the Office of the State Engineer. The State Engineer concludes that the approval of an application that the applicant has no interest in pursuing would threaten to prove detrimental to the public interest.

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

<sup>3</sup> NRS § 533.370(3).

RULING

Application 52394 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/TCPj/jm

Dated this 27th day of  
November, 2002.