

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

IN THE MATTER OF APPLICATIONS)
59833 AND 59834 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE)
WITHIN THE JEAN LAKE VALLEY)
HYDROGRAPHIC BASIN (165), CLARK)
COUNTY, NEVADA.)

RULING
5319

GENERAL

I.

Application 59833 was filed on March 15, 1994, by JCE Development, Inc., to appropriate 1.1 cubic feet per second (cfs) of water from an underground source (Well No. 2) for quasi-municipal and domestic purposes. The place of use is described as being located within Sections 19, 20, 29 and 30, T.24S., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T.24S., R.60E., M.D.B.&M.¹

II.

Application 59834 was filed on March 15, 1994, by JCE Development, Inc., to appropriate 1.1 cfs of water from an underground source (Well No. 1) for quasi-municipal and domestic purposes. The place of use is described as being located within Sections 19, 20, 29 and 30, T.24S., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T.24S., R.60E., M.D.B.&M.²

III.

Applications 59833 and 59834 were timely protested by Gary Primm/Whiskey Pete's Casino on the following grounds:^{1,2}

Protestant is the owner of Permits 50701, 50808, 51870, 51871, 51872, 51873, 52087, 52088, 52685, 52686, and 52687 to appropriate and use underground water within the Nevada & California Ivanpah basin. The state engineer has rejected past applications by the Protestant to

¹ File No. 59833, official records in the Office of the State Engineer.

² File No. 59834, official records in the Office of the State Engineer.

appropriate additional water on the grounds that the basin is over-appropriated. To make contrary determinations at this time would be highly inequitable. Additionally, Application 59833 (59834) would conflict with Protestant's existing rights by reducing the quantity and quality of water available in the Ivanpah basin.

IV.

Applications 59833 and 59834 were timely protested by the Las Vegas Valley Water District on the following grounds:¹

The Las Vegas Valley Water District protests Application No. 59833 (59834) by JCE Development, Inc. for Appropriation of Water from Hydrologic Basin 165, on the basis that there is no unappropriated waters in the proposed source of supply. The granting of this application to appropriate 135 million gallons annually will adversely affect the existing water rights owned by the Las Vegas Valley Water District in adjacent Hydrologic Basin No. 164, Ivanpah Valley, which supply Jean, Nevada. The granting of this application in view of the above is detrimental to the public interest.

FINDINGS OF FACT

I.

The State Engineer set a public hearing for June 21, 1995, to consider the matter of protested Applications 59833 and 59834. By agreement, the applicant and the two protestants agreed to postpone the hearing to a later date. By notice dated June 15, 1995, the State Engineer's office notified the respective parties that the hearing would be postponed. The applicant was further instructed to notify the State Engineer of any progress toward resolving the protest issues and the applicant was required to notify the State Engineer on or before June 1, 1996, if a hearing was still desired. The State Engineer finds that the applicant failed to notify the State Engineer on or before June 1, 1996, as required.¹

II.

The applicant and its agent were notified by certified mail dated May 27, 2003, to submit additional information to the Office of the State Engineer regarding interest in pursuing Applications 59833 and 59834. The applicant was warned that failure to respond by July 31, 2003, would indicate the applicant's lack of interest in pursuing the applications. The certified letter to the applicant was returned to the Office of the State

Engineer by the U.S Postal Service stamped "Return to Sender" and "Forward Expired". The U.S. Postal Service returned a properly endorsed certified mail receipt to the Office of the State Engineer from the applicant's agent on June 2, 2003. To date, no information from the applicant or its agent has been received. The State Engineer finds that the applicant and its agent were properly notified of the request for additional information regarding Applications 59833 and 59834, and failed to respond.¹

III.

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

IV.

The State Engineer finds that there has been no correspondence from the applicant or it's agent regarding Applications 59833 and 59834 for at least 8 years.¹

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

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.

³ NRS chapters 533 and 534.

⁴ NRS § 533.375.

⁵ NRS § 533.370(3).

IV.

The applicant was properly notified of the requirement for additional information and has failed to submit the information to the State Engineer's Office. The State Engineer concludes that the failure to respond demonstrates the applicant's lack of interest in pursuing Applications 59833 and 59834. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

RULING

Application 59833 and 59834 are hereby denied on the grounds their issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 20th day
of February, 2004.