

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

IN THE MATTER OF APPLICATION 44445)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE MONITOR VALLEY)
SOUTHERN PART HYDROGRAPHIC)
BASIN (140(B)), NYE COUNTY, NEVADA.)

RULING

#5374

GENERAL

I.

Application 44445 was filed on September 18, 1981, by Robert L. and Bonnie Brown (undivided) and later assigned to Robert L. Brown (1/2 interest) and Bonnie Brown (1/2 interest), to appropriate 9.7 cubic feet per second of water from an underground source for irrigation and domestic purposes in support of Desert Land Entries. The proposed place of use is described as being 640 acres located within the E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 20, the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 21, the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 28, and the E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ of Section 29, T.9N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T.9N., R.46E., M.D.B.&M.¹

FINDINGS OF FACT

I.

The applicants and their agent were notified by certified mail dated December 16, 2003, to submit additional information regarding Application 44445 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 certified letter to the applicants was returned to the Office of the State Engineer, by the U.S. Postal Service, stamped "Unclaimed". This letter was re-sent by regular mail and was returned to the Office of the State Engineer, by the U.S. Postal Service, stamped "Attempted Not Known". An additional certified letter was sent to the applicants at an alternate address. This certified letter was returned to the Office of the State Engineer, by the U.S. Postal Service,

¹ File No. 44445, official records in the Office of the State Engineer.

stamped "Attempted Not Known". A properly endorsed certified mail receipt was received in the Office of the State Engineer dated December 22, 2003, from the applicants' agent. To date, the applicants and their agent have expressed no interest in pursuing this application and have not submitted the additional information requested.¹ The State Engineer finds that the applicants and their agent were properly notified of the request for additional information regarding interest in pursuing Application 44445 and have failed to respond.

II.

The State Engineer finds that there has been no correspondence from the applicants or their agent in regards to this application for over 12 years.¹ The State Engineer finds that it is the responsibility of the applicants or their agent to keep this office informed of a current mailing address.

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;
- 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.

² NRS chapters 533 and 534.

³ NRS § 533.375.

⁴ NRS § 533.370(4).

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 express any interest in these applications for over 12 years and the failure to submit requested information demonstrates the applicants' lack of interest in pursuing Application 44445. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue permits under these circumstances.

RULING

Application 44445 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 16th day of
June, 2004.