

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

IN THE MATTER OF APPLICATION 31435)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE AND APPLICATION 48364 FILED)
TO CHANGE THE POINT OF DIVERSION)
AND PLACE OF USE OF A PORTION OF)
APPLICATION 31435, WITHIN THE)
RAILROAD VALLEY NORTHERN PART)
HYDROGRAPHIC BASIN 173(B), NYE)
COUNTY, NEVADA.)

RULING

#5377

GENERAL

I.

Application 31435 was filed on May 3, 1977, by Tenabo Gold Mining Co., Inc., and later assigned to Terrie L. Wiles (1/2 interest) and Leonard F. Lissolo (1/2 interest), to appropriate 10.8 cubic feet per second (cfs) of water from an underground source for irrigation and domestic purposes. The proposed place of use is described as being located in all of Section 5, T.4N., R.55E., 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 said Section 5.¹

II.

Application 48364 was filed on September 6, 1984, by Terrie L. Wiles, to change the point of diversion and place of use of a portion of Application 31435 being 5.4 cfs of water from an underground source for irrigation and domestic purposes. The proposed place of use is described as being located in the SE $\frac{1}{4}$ of Section 31 and the SW $\frac{1}{4}$ of Section 32, T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T.4N., R.53E., M.D.B.&M.²

III.

Application 48364 was timely protested by Roger Hockersmith on the following grounds:²

¹ File No. 31435, official records in the Office of the State Engineer.

² File No. 48364, official records in the Office of the State Engineer.

On or about November 11, 1983, Roger Hockersmith entered into an agreement with the agent of several water applicants to purchase their water applications. Said applications included the underlying applications from whence the herein protested application originated. (Application Nos. 31, 424 through 31, 438, excluding 31, 428 and 31, 432)

Hockersmith thereafter was joined by a third party who was to assist in the financing and development of a project conceived by Hockersmith and involving said water applications. Said third party executed a non-disclosure agreement whereby it agreed not to use any proprietary [sic] information accumulated by Hockersmith and utilized by him in the creation of the project.

Notwithstanding said non-disclosure agreement, said third party, under the guise of an amendment of said agreement of November 11, 1983, named itself as the purchaser of said water applications; acquired quitclaim deeds for said water applications from the aforesaid agent; and usurped and put into operation Hockersmith's said project for the sole use and benefit of said third party.

Hockersmith is informed and believes and therefore alleges that the above named applicant is not a bona-fide purchaser for value and that he, Hockersmith, is the true owner of the protested application.

Hockersmith is contemplating an action to determine ownership and respectfully requests that the State Engineer take no action on the above named application for change of point of diversion and place of use until the true owner of said water application is determined.

Wherefore protestant prays that the application be denied and that an order be entered for such other relief as the State Engineer deems just and proper.

FINDINGS OF FACT

I.

The applicants and their agent were notified by certified mail dated December 31, 2003, to submit additional information regarding Applications 31435 and 48364 to the State Engineer's office. The applicants were warned that failure to respond within 30 days would result in denial of the applications. Properly endorsed certified mail receipts were received in the State Engineer's office from the applicants and their agent on January 5, 9, and 12, 2004.¹ To date, the applicants and their agent have expressed no interest in pursuing these applications and have not submitted the additional information requested. The State Engineer finds that the applicants and their agent were properly notified of the request for additional information regarding interest in pursuing Applications 31435 and 48364 and have failed to respond.

II.

Application 48364 was filed to change a portion of Application 31435. Information in the file indicates that Application 48364 was filed to support Desert Land Entry Application, BLM #N40991. By letter dated December 4, 1991, the U.S.D.I. Bureau of Land Management

indicated that Desert Land Entry Application (DLE), BLM #N40991 was closed in February 1987.² The State Engineer finds that the purpose for which Application 48364 was filed no longer exists.

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.

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 the applications demonstrates the applicants' lack of interest in pursuing Applications 31435 and 48364. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue permits under these circumstances.

V.

Application 48364 was filed in support of a DLE application that has been closed by the BLM. The State Engineer concludes that it would threaten to prove detrimental to the public

³ NRS chapters 533 and 534.

⁴ NRS § 533.375.

⁵ NRS § 533.370(4).

interest to approve a water right application filed in support of a DLE, where the DLE application has been closed.

RULING

Applications 31435 and 48364 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 protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 17th day of
June, 2004.