

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

IN THE MATTER OF APPLICATION)
62327 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE AMARGOSA VALLEY)
HYDROGRAPHIC BASIN, (230) NYE)
COUNTY, NEVADA.)

RULING

#5404

GENERAL

I.

Application 62327 was filed on July 26, 1996, by Fluid Tech, Inc., to appropriate 1.0 cubic feet per second of underground water for commercial and domestic purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, T.16S., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 5. ¹

II.

Application 62327 was timely protested by Fred L. and Dixie J. White, Robert J. Eastman and the United States Department of Interior, National Park Service on grounds that will not be considered in this ruling.¹

FINDINGS OF FACT

I.

If the records of the Office of the State Engineer contain sufficient information to formulate a full understanding of the issues before him, the State Engineer may at his discretion, rule on the merits of an application and its associated protests without the benefit of an administrative hearing.² The State Engineer finds, that in the case of Application 62327, the record of information available to him does not need to be supplemented with evidence and testimony derived from a hearing.

¹ File No. 62327 official records in the Office of the State Engineer.

² NRS § 533.365(3).

II.

An informal field investigation in the matter of Application 62327 was conducted on June 26, 1997, by a staff member of the State Engineer's Southern Branch Office. The report produced by the investigating party included the recommendation that additional information regarding the validity of the proposed project should be provided by the applicant. Accordingly, by letter dated July 7, 1997, the Office of the State Engineer requested the applicant to provide a more detailed description of the proposed manner of use and an accounting of its projected consumptive use of water.¹ This request was timely answered by the applicant who described the commercial activity as a low-level radioactive waste solidification operation, which was estimated to require 7,250 gallons of water per day. The nature of this activity also required the applicant to acquire a zero discharge permit from the Nevada Department of Environmental Protection (NDEP). Information submitted to the Office of the State Engineer and incorporated into the record maintained under Application 62327, indicates that that a zero discharge permit was eventually issued to Fluid Tech, Inc.³ While the approval of this permit is outside of the responsibilities of his office, the State Engineer finds that the status of this permit can be used as an indicator to assess the status of the applicant's project.

III.

The application file created under Application 62327 contains information, which has been obtained from NDEP, relating to the project's zero discharge permit. A summary sheet obtained from the NDEP Nevada Water Pollution Control System database indicates that the zero discharge permit issued to Fluid Tech, Inc., was cancelled on February 2, 1999. A notation on this page also indicates that Fluid Tech, Inc., decided not to use the facility representing the place of use under Application 62327.¹ The State

³ See, copy of Nevada Water Pollution Control database permit information page filed within Application 62327, official records in the Office of the State Engineer.

Engineer finds that information acquired from the NDEP indicates that the project described under Application 62327 is no longer being pursued by the applicant.

IV.

When the necessity for the use of water does not exist, the right to divert it ceases, and no person shall be permitted to divert or use the waters.⁴ Information contained within the application file indicates that Fluid Tech, Inc., is no longer committed to continuing the development of the processing of low level nuclear waste at the location described under Application 62327.¹ The State Engineer finds that the necessity to appropriate water as described under Application 62327 has ceased, removing the need to issue a permit.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- 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.

⁴ NRS 533.045.

⁵ NRS chapters 533 and 534.

⁶ NRS 533.370(4).

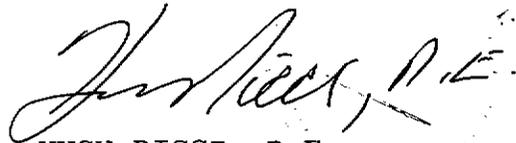
III.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 62327 was to provide underground water for a low-level radioactive waste solidification facility. Information found within the records of the Office of the State Engineer indicates that the applicant's project no longer exists at the location described under Application 62327. Therefore, the State Engineer concludes that the necessity to divert the requested water has ceased and that the approval of such an application would threaten to prove detrimental to the public interest.

RULING

Application 62327 is hereby denied on the grounds that its approval 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/MB/jm

Dated this 28th day
of June 2004.