

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

IN THE MATTER OF APPLICATION 49736 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF THE TRUCKEE RIVER, TRACY )  
SEGMENT HYDROGRAPHIC BASIN (83), )  
STOREY COUNTY, NEVADA. )

**RULING**  
**# 5593**

**GENERAL**

**I.**

Application 49736 was filed on February 27, 1986, by Richard D. Mercier, Giselle P. Mercier and Chris Gunther to change the point of diversion and place of use of 0.047 cubic feet per second, not to exceed 5.0 acre-feet annually, a portion of the water of the Truckee River previously appropriated under Claim 630 of the Truckee River Decree. The proposed point of diversion is described as being at Derby Dam and the water is proposed to be used for the decreed purpose within portions of the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 21 and the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 22, T.20N., R.23E., M.D.B.&M.<sup>1</sup>

**II.**

Application 49736 was timely protested by the Truckee-Carson Irrigation District on grounds not considered in this ruling.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

By letter dated March 22, 2005, the State Engineer requested the applicants to provide him with information as to whether they were still interested in pursuing the application and indicated that failure to respond within 30 days of the date of the letter would indicate an intention not to pursue the application. The certified letters to the applicants and their agent were returned by the United States Postal Service marked "attempted not known" and "insufficient address." The State Engineer finds that no response was received to the request for updated information and the applicants have not indicated any interest in pursuing the

<sup>1</sup> File No. 49736, official records in the Office of the State Engineer.

application in 19 years. The State Engineer finds it is the responsibility of the applicants or their successor in interest 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.<sup>2</sup>

**II.**

Before either approving or rejecting an application, the State Engineer may require such additional information from the applicant as will enable him to properly guard the public interest.<sup>3</sup>

**III.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</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.

**IV.**

The applicants have failed to submit the information requested to the Office of the State Engineer and have failed to indicate any interest in pursuing the application in 19 years. The State Engineer concludes that without the additional data sufficient information is not available to properly guard the public interest. The State Engineer concludes to grant a water

---

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

<sup>3</sup> NRS 533.375.

<sup>4</sup> NRS 533.370(4).

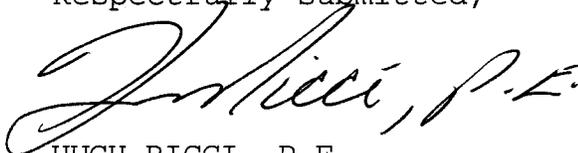
Ruling  
Page 3

right to an applicant that does not express an intent to go forward with the project would threaten to prove detrimental to the public interest.

**RULING**

Application 49736 is hereby denied on the grounds that the applicant has not submitted the data and information requested by the Office of the State Engineer, and that without this information granting of the application 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/SJT/jm

Dated this 14th day of  
March, 2006.