

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

IN THE MATTER OF APPLICATION)
38184 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE RUBY VALLEY)
HYDROGRAPHIC BASIN (176), ELKO)
COUNTY, NEVADA.)

RULING

5678

GENERAL

I.

Application 38184 was filed on May 15, 1979, by Magda V. Tautphoeus to appropriate 5.0 cubic feet per second of water from an underground source within the Ruby Valley Hydrographic Basin, Elko County, Nevada, for irrigation and domestic purposes within the S½ of Section 27, T.32N., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 27, T.32N., R.60E., M.D.B.&M.¹ Application 38184 was filed in support of Desert Land Entry Application Serial Number NVN-024630.

FINDINGS OF FACT

I.

By certified letter dated June 14, 2005, to the Applicant's agent, the Office of the State Engineer requested information to be provided as to whether there was still an interest in pursuing Application 38184. The letter assigned a 30-day time frame to submit the requested information or the application would be subject to denial. The signed certified mail receipt from the agent was received in the Office of the State Engineer on June 21, 2005. The State Engineer finds there has been no expressed interest in pursuing this application in 17 years. The State Engineer finds that no response was received to the request for information.

¹ File No. 38184, official records in the Office of the State Engineer.

II.

Additional information was requested by the Office of the State Engineer from the Bureau of Land Management and was received on June 7, 2005. It indicated that the Desert Land Entry Application Number NVN 024630 was Rejected/Denied on November 7, 1994, and the case closed on December 6, 1994.¹ The State Engineer finds there is no pending right of entry application for the place of use identified under Application 38184; therefore the Applicant cannot place the water to beneficial use as applied for under Application 38184.

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 from the applicant 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 waters 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(5).

IV.

The Applicant has failed to submit the information requested to the State Engineer's office. 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 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.

IV.

The State Engineer concludes that to grant an application to appropriate the public waters for irrigation on lands the applicant does not fully own or control or where the applicant cannot demonstrate the ability to place the water to beneficial use would threaten to prove detrimental to the public interest.

RULING

Application 38184 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/KMH/jm

Dated this 30th day of

November, 2006.