

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

IN THE MATTER OF APPLICATION 10396 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF UPPER LONG CREEK SPRINGS )  
WITHIN THE CLOVERS AREA )  
HYDROGRAPHIC BASIN (064), LANDER )  
COUNTY, NEVADA. )

RULING

# 5104

GENERAL

I.

Application 10396 was filed on July 10, 1939, by George I. Fenton to appropriate 2.0 cubic feet per second of water from Upper Long Creek Springs. The proposed manner of use and place of use is for mining purposes within eighteen placer claims that are described as being located within the S $\frac{1}{2}$  S $\frac{1}{2}$  of Section 20 and the NW $\frac{1}{4}$ , NE $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  SW $\frac{1}{4}$  and the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 29, T.32N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 23, T.32N., R.43E., M.D.B.&M.<sup>1</sup>

II.

Application 10396 was timely protested by the W. T. Jenkins Company on various grounds, with this protest remaining in effect until its withdrawal on June 18, 1951.<sup>1</sup>

FINDINGS OF FACT

I.

Every water right application that is accepted for filing within the Office of the State Engineer must state the applicant's name and address. Application 10396 was filed by J.A. Millar, under the name of George I. Fenton, whose address is simply stated as Battle Mountain, Nevada. An examination of the correspondence found within the application file identifies several additional

<sup>1</sup> File No. 10396, official records in the Office of the State Engineer.

addresses for George I. Fenton, all in care of J.A. Millar, with the most recent address dated 1939.<sup>1</sup> No transfers of title or requests for changes of address have been submitted to the Office of the State Engineer in regard to Application 10396; therefore, the State Engineer finds that the owner and address of record remain unchanged from the information contained within the original application.

**II.**

By certified letter dated August 26, 1999, the applicant was requested by the Office of the State Engineer to submit written evidence of a continued interest in Application 10396. The applicant was advised that a response to this request must be received in the Office of the State Engineer within thirty days from the date of the letter. The applicant was also advised that a failure to timely respond would result in a possible denial of Application 10396. The envelopes for the State Engineer's certified mailing to the applicant's various addresses were returned as unclaimed by the U.S. Postal Service to the Office of the State Engineer. Consequently, no response to the August 26, 1999 letter has ever been received from either George I. Fenton or J.A. Millar.<sup>1</sup> The State Engineer finds that the applicant has been properly noticed of the need to provide written evidence of a continued interest in the subject application, but has failed to do so; therefore, Application 10396 can be considered for denial.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>2</sup>

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>3</sup>

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

<sup>3</sup> NRS § 533.370(3).

- 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.

**III.**

The applicant has been requested to provide the State Engineer with additional information relating to Application 10396. This request was made with the understanding that a failure to respond in a timely manner would represent a lack of interest on the applicant's part in pursuing the subject application. To this date, no response regarding this matter has been received in the Office of the State Engineer. The State Engineer concludes that the approval of an application that the applicant has no interest in pursuing would threaten to prove detrimental to the public interest.

**RULING**

Application 10396 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/MB/jm

Dated this 20th day of  
February, 2002.