

IN THE OFFICE OF STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATIONS 51532)
AND 51533 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE CARSON DESERT)
HYDROGRAPHIC BASIN (101); CHURCHILL)
COUNTY, NEVADA.)

RULING

5105

GENERAL

I.

Application 51532 was filed on November 6, 1987, by Philip J. and Edith Jones to appropriate 2.0 cubic feet per second of water for mining, milling and domestic purposes within Lot 2 and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T.17N., R.29E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 18.¹

II.

Application 51533 was filed on November 6, 1987, by Philip J. and Edith Jones to appropriate 2.0 cubic feet per second of water for mining, milling and domestic purposes within Lot 2 and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T.17N., R.29E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 18.²

III.

The Truckee Carson Irrigation District, (TCID) maintained a timely protest to Applications 51532 and 51533 until the conditional withdrawal of its protest on November 17, 1994.¹

1 File No. 51532, official records in the Office of the State Engineer.

2 File No. 51533, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Once a water right application is accepted for filing in the Office of the State Engineer, it is assigned a serial number, under which all the documentation and correspondence associated with this specific water right application is filed. This record of information is used to identify the names and addresses of those parties that must be contacted regarding the application. Should changes in ownership and addresses occur, it is the applicant's responsibility to advise the State Engineer of these changes in accordance with the Nevada Revised Statutes and the policies of the Office of the State Engineer. An examination of the files created under Applications 51532 and 51533 indicates that several unsuccessful attempts have been made by various parties to transfer title of this application into their respective names.¹ The State Engineer finds that a valid transfer of title has never occurred under Applications 51532 and 51533; therefore, the original permittees remain the recognized owners of record.

II.

Since their filing on November 6, 1987, the subject applications have experienced a multitude of problems that are documented by correspondence received and recorded within the application files. Some of these problems, such as the TCID protest have been resolved with time, but questions regarding possible successors in interest still remain. The uncertainty that exists regarding exactly who should receive notice in matters regarding Applications 51532 and 51533 prompted the Office of the State Engineer to expand the list of interested parties beyond the accepted owners of record. The State Engineer finds that by increasing the number of parties included in the noticing process

new sources of information may be developed, from which answers to some of the questions that remain under the subject applications can be obtained.

III.

Both Applications 51532 and 51533 request an appropriation of water for a mining and milling operation that was originally expected to require 50,000 gallons of water per day.¹ When considering an application that requests this manner of use, the State Engineer often requires the applicant to provide a more detailed description of the project and its anticipated water usage. The State Engineer finds the initial information contained within Applications 51532 and 51533 must be supplemented with updated justification and consumptive use data.

IV.

By certified letters dated January 17, 2001, the surviving applicant, Edith Jones, was noticed at her address of record to submit updated justification and consumptive use data and to update the ownership, address and agent information associated with Applications 51532 and 51533. The applicant was also advised that a failure to submit this information within sixty days from the date of the letter would subject both applications to possible denial. An identical notice was also sent to numerous parties located at a variety of addresses. The envelopes containing the notices sent to Edith Jones were returned to the Office of the State Engineer stamped with notations indicating that they were undeliverable. Signed receipts were also received from some of the other parties that were included on the mailing list. To this date, the only response that has been received in this matter was a telephone call from Robert Lantz, who informed the Office of the State Engineer of a change of address.¹ The State Engineer finds that only those parties, which returned signed receipts or contacted the office of the State Engineer, will remain on the noticing list under Applications 51532 and 51533.

V.

By certified letters dated November 2, 2001, the parties remaining on the mailing list were requested by the Office of the State Engineer to provide current ownership and justification data. A sixty day response time was set by the notice which also included a warning that a failure to respond in a timely manner would result in the denial of Applications 51532 and 51533. This second request for additional information prompted a written response from Thomas L. Riggin, who stated that the property associated with Applications 51532 and 51533 had been sold to an unrelated third party. Other than this brief general reference, there is no deed, report of conveyance or correspondence on file in the records of the State Engineer that would identify this third party.¹ The State Engineer finds that on two separate occasions, the applicants, their possible successor and assorted parties, have been requested to provide additional information regarding the subject applications, and have failed to do so; therefore, Applications 51532 and 51533 can be considered for denial.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting 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;

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(3).

- 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 applicants were properly notified of the requirement to submit additional information regarding Applications 51532 and 51533 and have failed to do so. The State Engineer concludes that the approval of applications that the applicants have no intention of completing would threaten to prove detrimental to the public interest.

RULING

Application 51532 and Application 51533 are hereby denied on the grounds that their approval would threaten to prove to be detrimental to the public interest.

Respectfully submitted,



Hugh Ricci, P.E.
State Engineer

HR/MB/jm

Dated this 20th day of
February, 2002.