

256

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

IN THE MATTER OF APPLICATION 25534 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF WHITE ROCK CREEK WITHIN )  
THE SOUTH FORK OWYHEE AREA )  
HYDROGRAPHIC BASIN (35), ELKO )  
COUNTY, NEVADA. )

RULING

**#5256**

GENERAL

I.

Application 25534 was filed on April 9, 1970, by Blue Jacket Mining Company to appropriate 3.0 cubic feet per second of water from White Rock Creek for power purposes. The proposed place of use is described as being located within NE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> of Section 19, T.44N., R.52E., M.D.B.&M. The proposed point of diversion is described as being located within the NW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> of Section 20, T.44N., R.52E., M.D.B.&M.<sup>1</sup>

II.

The application was timely protested by C. H. Jackson, Jr. and Ann G. Jackson, his wife, a co-partnership dba Petan Company on the following grounds:<sup>1</sup>

1. That applicant cannot apply said waters to beneficial use for the requested purpose.
2. That Protestants are possessed of a vested right to the aforesaid waters for the purpose applied for, in that Protestants own the Edgemont patented mining claims and unpatented mining claims, together with a vested right acquired before 1905 to the waters of White Rock Creek for the purpose of producing power and electric energy to serve said mining claims, and also domestic power use at or about said site.
3. That Protestants have vested rights acquired before 1905 to all of the waters of White Rock Creek for the purpose of irrigation, stock water and domestic use and have applied said waters to beneficial use.
4. That the granting of the above-described Application would impair the value of the existing water rights

<sup>1</sup> File No. 25534, official records in the Office of the State Engineer.

of Protestants for power purposes and would depreciate the value and potential mining operations on the Edgemont Mining Claims owned by Protestants.

5. That granting this Application would impair the value of existing water rights of Protestants for irrigation, stock water and domestic use and would cause a loss to Protestants by curtailing their ranching and livestock raising operations.

#### FINDINGS OF FACT

##### I.

The applicant and its agent were notified by certified mail dated February 26, 2003, to submit additional information to the State Engineer's Office and to advise this office in writing if it was interested in pursuing Application 25534. The applicant was warned that failure to respond within 30 days would result in denial of the application. The certified letter to the applicant was returned to the Office of the State Engineer by the U.S. Postal Service stamped "Undeliverable As Addressed" and "No Forwarding Order On File". The agent responded by letter stating that its last communication with the representative of the applicant was in July, 1970, concerning the protest filed.<sup>1</sup> To date, the applicant and its agent have expressed no interest in pursuing this application. The State Engineer finds that the applicant and his agent were properly notified of the request for additional information regarding interest in pursuing Application 25534 and no interest has been expressed.

##### II.

The State Engineer finds that it is the responsibility of the applicant, its agent, or their successor in interest to keep this office informed of a current mailing address.

##### III.

The State Engineer finds that there has been no correspondence from the applicant regarding Application 25534 for at least 12 years.<sup>1</sup>

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 as will enable him to properly guard the public interest.<sup>3</sup>

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water 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 applicant and its agent were properly notified of the requirement for additional information concerning interest in this application and have failed to submit the information to the State Engineer's Office. The State Engineer concludes that the failure to express any interest in the application for over 12 years and failure to maintain a current address demonstrates the applicant's lack of interest in pursuing Application 25534. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under an application for which no interest is expressed.

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

<sup>3</sup> NRS § 533.375.

<sup>4</sup> NRS § 533.370(3).

RULING

Application 25534 is hereby denied on the grounds that its issuance 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/TW/dl

Dated this 6th day of  
June, 2003.