

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

IN THE MATTER OF APPLICATION)
32381 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE PAHRANAGAT)
VALLEY HYDROGRAPHIC BASIN)
(209), LINCOLN COUNTY, NEVADA.)

RULING

#5334

GENERAL

I.

Application 32381 was filed on June 28, 1977, by Barbara Koester to appropriate 2.7 cubic feet per second of underground water for irrigation and domestic purposes within 160 acres of land located within the NE $\frac{1}{4}$ of Section 9, T.5S., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 9.¹

FINDINGS OF FACT

I.

Application 32381 was filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of the applicant's Carey Act Land Entry application. By letter dated August 15, 2003, the Nevada Division of State Lands notified the State Engineer that the Carey Act Land Entry Application associated with Application 32381 had been cancelled.¹ The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 32381 has been rejected by the proper governing state agency.

¹ File No. 32381, official records in the Office of the State Engineer.

II.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 32381 is for the irrigation of land that was to be removed from federal control and transferred to the applicant through the filing and approval of the applicant's Carey Act Land Entry application. The Carey Act Land Entry application filed by Barbara Koester was cancelled by the Nevada Division of State Lands with the ownership of the land requested for removal retained by the federal government. The State Engineer finds that the purpose for which Application 32381 was filed no longer exists; therefore, the necessity to divert water as proposed under the subject application has ceased.

III.

Application 32381 was filed on June 28, 1977, and the filing of this application represents the first and last contact the applicant has made with the State Engineer's office. During the twenty-six years that have passed since the submittal of the application, no record of correspondence or telephone communications has been entered into the record of information maintained under Application 32381. This extensive period of silence, prompted the Office of the State Engineer to take action in the form of an August 8, 2003, letter in which the applicant was requested to provide a written response affirming any continued interest that she may have in placing the water requested under Application 32381 to its intended beneficial use. This letter, which was addressed to the applicant at her address of record, was returned by the United States Postal Service with the enveloped stamped, "Return to Sender, Forwarding Address Expired". Subsequently, no information regarding Application 32381 has been received in response to the August 8, 2003, letter.¹ The State Engineer finds that the

applicant's failure to maintain a current mailing address, combined with twenty-six years of inactivity, represents a lack of interest in pursuing Application 32381.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where: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.

Application 32381 requests an appropriation of water for a project that does not exist. The State Engineer concludes that to approve a permit where the need to appropriate water has ceased would threaten to prove detrimental to the public interest.

IV.

The State Engineer also concludes that the approval of a water right application, which the applicant has no intent of completing would threaten to prove detrimental to the public interest.

² NRS chapters 533 and 534.

³ NRS § 533.370(3).

RULING

Application 32381 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/MDB/jm

Dated this 8th day
of March, 2004.