

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

IN THE MATTER OF APPLICATIONS 32002)
AND 32003 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE STEPTOE VALLEY)
HYDROGRAPHIC BASIN (179), WHITE PINE)
COUNTY, NEVADA.)

RULING

#5412

GENERAL

I.

Application 32002 was filed on June 10, 1977, by Faye L. Israel, to appropriate 2.7 cubic feet per second (cfs) of water from an underground source for irrigation and domestic purposes in support of a Carey Act application. The proposed place of use is described as being located within E $\frac{1}{2}$ W $\frac{1}{2}$ of Section 1, T.20N., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 1.¹

II.

Application 32003 was filed on June 10, 1977, by Joseph F. Israel, to appropriate 2.7 cfs of water from an underground source for irrigation and domestic purposes in support of a Carey Act application. The proposed place of use is described as being located within W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 1, T.20N., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 1.²

FINDINGS OF FACT

I.

A review of the records in the Office of the State Engineer show that the place of use described in the applications is public land managed by the United States Department of the Interior, Bureau of Land Management (BLM).³ By letter dated March 17, 2000,

¹ File No. 32002, official records in the Office of the State Engineer.

² File No. 32003, official records in the Office of the State Engineer.

³ United States Bureau of Land Management, "Kern Mountains", 1:100,000-scale topographic map, revised 1997.

the BLM informed the Office of the State Engineer that the land described under the place of use of Applications 32002 and 32003 had "No Case File".^{1,2}

Under the remarks section of the applications, it is indicated that the applications were filed in support of a Carey Act application. The Nevada Division of State Lands informed the Office of the State Engineer that the Carey Act application filed in support of Applications 32002 and 32003 was cancelled on July 29, 1985.^{1,2}

The State Engineer finds the applicants do not own or control the land described under the place of use of Applications 32002 and 32003. The State Engineer also finds that the Carey Act application, for which these water right applications were filed, has been cancelled.

II.

The applicants and their agent were notified by certified mail dated March 4, 2004, to submit additional information regarding Applications 32002 and 32003 to the State Engineer's office. Specifically, the applicants were instructed to send a written response to the Office of the State Engineer verifying the status of any entries/applications, exchanges, and/or possible purchases associated with the described place of use. The applicants were warned that failure to respond within 30 days would result in denial of the applications. Properly endorsed certified mail receipts were received in the Office of the State Engineer on March 10 and March 11, 2004, for the certified letters to the applicants. The certified letter to the applicant's agent was returned to the Office of the State Engineer by the U.S. Postal Service stamped "Attempted Not Known".¹ The State Engineer finds that the applicants and their agent were properly notified of the request for additional information and failed to respond.

III.

The State Engineer finds that it is the responsibility of the applicants or their agent to keep this office informed of a current mailing address.

IV.

The State Engineer finds that there has been no correspondence from the applicants or their agent for over 20 years.^{1,2}

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

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.⁵

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁶

- 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 applicants and their agent were properly notified of the requirement for additional information 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 applications for over 20 years and the failure to submit requested information demonstrates the applicants' lack of interest in pursuing Applications 32002 and 32003. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue permits under these circumstances.

V.

The State Engineer concludes that approval of water right applications in support of a DLE or Carey Act, where the BLM has no case file for a DLE and the Nevada Division of State Lands shows the Carey Act application has been cancelled, would not be in the public interest.

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.375.

⁶ NRS § 533.370(4).

RULING

Applications 32002 and 32003 are hereby denied on the grounds their issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 27th day of
August, 2004.