

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

IN THE MATTER OF APPLICATIONS 32677)
AND 32678 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE STEPTOE VALLEY)
HYDROGRAPHIC BASIN (179), WHITE PINE)
COUNTY, NEVADA.)

RULING

#5424

GENERAL

I.

Application 32677 was filed on July 5, 1977, by Gary M. Rosenlund 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 NW¼ of Section 15, T.20N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within NW¼ NW¼ of said Section 15.¹

II.

Application 32678 was filed on July 5, 1977, by Collete P. Rosenlund 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 SW¼ of Section 15, T.20N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within SW¼ SW¼ of said Section 15.²

III.

Applications 32677 and 32678 were timely protested by Marion E. Johnson on grounds not relevant to this decision.

FINDINGS OF FACT

I.

A review of records in the Office of the State Engineer show that the place of use described in the application is public land managed by the United States Department of

¹ File No. 32677, official records in the Office of the State Engineer.

² File No. 32678, official records in the Office of the State Engineer.

the Interior, Bureau of Land Management (BLM).³ By letter dated March 17, 2000, the BLM sent information regarding the status of Carey Act and Desert Land Entry applications for the land described in the place of use of water right Applications 32677 and 32678. The BLM informed the Office of the State Engineer that their records of the land described under the place of use of Applications 32677 and 32678 showed "No Case File".^{1,2}

Under the remarks section of Applications 32677 and 32678, 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 32677 and 32678 was cancelled on July 29, 1985.^{1,2}

The State Engineer finds the applicant does not own or control the land described under the place of use of Applications 32677 and 32678. 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 9, 2004, to submit additional information regarding Applications 32677 and 32678 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 the denial of the applications. A properly endorsed certified mail receipt was received in the Office of the State Engineer on March 15, 2004, for the certified letter to the applicants' agent.¹ The certified mailing to the applicants was returned by the U.S. Postal Service as "Unclaimed". The State Engineer finds that the applicants and their agent were properly notified of the request for additional information and have failed to respond.

III.

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

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

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 32677 and 32678. 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 where the applicant does not own or control the land would threaten to prove detrimental to the public interest.

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.375.

⁶ NRS § 533.370(4).

RULING

Applications 32677 and 32678 are hereby denied on the grounds their issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 20th day of
September, 2004.