

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

IN THE MATTER OF APPLICATIONS 31354)
AND 31355 FILED TO APPROPRIATE THE)
PUBLIC WATERS AN UNDERGROUND)
SOURCE WITHIN THE STEPTOE VALLEY)
HYDROGRAPHIC BASIN (179), WHITE PINE)
COUNTY, NEVADA.)

RULING

#5409

GENERAL

I.

Application 31354 was filed on April 22, 1977, by Patricia P. Rice and later assigned to Charlotte A. Smith, 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 NE¼ of Section 29, T.20N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within NE¼ NE¼ of said Section 29.¹

II.

Application 31355 was filed on April 22, 1977, by Charlotte Smith, 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 SE¼ of Section 29, T.20N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within SE¼ SE¼ of said Section 29.²

FINDINGS OF FACT

I.

A review of 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, 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 31354 and 31355. The BLM informed

¹ File No. 31354, official records in the Office of the State Engineer.

² File No. 31355, 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 Office of the State Engineer that their records of the land described under the place of use of Applications 31354 and 31355 showed "Case Closed" and "No Case File", respectively.^{1,2}

Under the remarks section of Applications 31354 and 13155, 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 applications filed in support of Applications 31354 and 31355 were cancelled on June 14, 1985.^{1,2}

The State Engineer finds the applicant does not own or control the land described under the place of use of Applications 31354 and 31355. The State Engineer also finds that the Carey Act applications, for which these water right applications were filed, have been cancelled.

II.

The applicant and her agent were notified by certified mail dated March 4, 2004, to submit additional information regarding Applications 31354 and 31355 to the State Engineer's office. Specifically, the applicant was 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 applicant was 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 March 11, 2004, for the certified letters to the applicant and her agent.¹ The State Engineer finds that the applicant and her agent were properly notified of the request for additional information and failed to respond.

III.

The State Engineer finds that there has been no correspondence from the applicant or her agent for over 18 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

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.375.

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 applicant and her 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 application for over 18 years and the failure to submit requested information demonstrates the applicant's lack of interest in pursuing Applications 31354 and 31355. 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 "case closed" or "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.

RULING

Applications 31354 and 31355 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.

⁶ NRS § 533.370(4).