

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

IN THE MATTER OF APPLICATION 32103 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE STEPTOE VALLEY )  
HYDROGRAPHIC BASIN (179), WHITE )  
PINE COUNTY, NEVADA. )

**RULING**  
**#5411**

**GENERAL**

**I.**

Application 32103 was filed on June 17, 1977, by James Stewart Robison to appropriate 2.7 cubic feet per second 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 Lot 3, SE $\frac{1}{4}$  NW $\frac{1}{4}$ , E $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 3, T.20N., R.64E., 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 3.

**II.**

Application 32103 was timely protested by Marion E. Johnson on the following grounds:<sup>1</sup>

It would impair and conflict with the value of existing rights; that it would be against public policy to grant said application, and contrary to statute; that the granting of said application would interfere with the customary use of Protestant's grazing of said areas. This application is located in a fenced crested wheat seeding. This seeding is part of a BLM Allotment Management Plan. Losing any part of this range puts the entire Allotment Management Plan out of balance.

**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 the Interior, Bureau of Land Management (BLM).<sup>2</sup> By letter dated March 17, 2000, the

<sup>1</sup> File No. 31356, official records in the Office of the State Engineer.

<sup>2</sup> United States Bureau of Land Management, "Kern Mountains", 1:100,000-scale topographic map, revised 1997.

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 32103. The BLM informed the Office of the State Engineer that their records of the land described under the place of use of Applications 32103 showed "No Case File".<sup>1</sup>

Under the remarks section of Application 32103, it is indicated that the application was 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 Application 32103 was cancelled on July 29, 1985.<sup>1</sup>

The State Engineer finds the applicant does not own or control the land described under the place of use of Application 32103. The State Engineer also finds that the Carey Act application, for which these water right applications were filed, has been cancelled.

## II.

The applicant and his agent were notified by certified mail dated March 9, 2004, to submit additional information regarding Application 32103 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, and any progress made toward resolving the protest. 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 "Not Deliverable as Addressed" and "Attempted-Not Known". 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 applicant's agent.<sup>1</sup> The State Engineer finds that the applicant and his 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 his agent, regarding Application 32103, for over 26 years.<sup>1</sup> The State Engineer finds that it is the responsibility of the applicant or his agent to keep this office informed of a current and valid mailing address.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</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>4</sup>

### III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>5</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 his 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 26 years and the failure to submit requested information demonstrates the applicant's lack of interest in pursuing Application 32103. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

### V.

The State Engineer concludes that approval of a water right application 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.

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<sup>3</sup> NRS chapters 533 and 534.

<sup>4</sup> NRS § 533.375.

<sup>5</sup> NRS § 533.370(4).

**RULING**

Application 32103 is hereby denied on the grounds its 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.