

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

IN THE MATTER OF APPLICATION 28142 FILED )  
TO APPROPRIATE THE PUBLIC WATERS OF THE )  
VIRGIN RIVER WITHIN THE VIRGIN RIVER )  
VALLEY, CLARK COUNTY, NEVADA. )

RULING

# 4097

GENERAL

I.

Application 28142 was filed on February 25, 1974, by Abe Fox, attorney-in-fact for Simon and Betty Willen to appropriate 50 c.f.s. of water from the Virgin River for industrial purposes within the S $\frac{1}{2}$  NE $\frac{1}{4}$  Section 26, T.15S., R.68E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 24, T.15S., R.68E., M.D.B.&M.<sup>1</sup>

II.

Application 28142 was timely protested on June 27, 1974, by Glen K. Griffith as agent for State of Nevada, Department of Fish and Game on the following grounds:

Fifty second-feet pumped from the Virgin River will effectively dry it up for extended periods of the year. A resulting loss of fish and wildlife habitat would occur. Striped bass spawning would be precluded and use of the water would be denied to channel catfish, several waterfowl species, small game species and numerous non-game species. In addition to the habitat loss, water quality would be adversely affected due to the concentration of salts in return flows and the elimination of the natural flushing action of the river. Wherefore protestant prays that the application be denied.<sup>1</sup>

FINDINGS OF FACT

I.

The applicant, Abe Fox, attorney-in-fact for Simon and Betty Willen and agent, David Causey were notified by certified mail on October 8, 1993, to submit additional information to the State Engineer's office regarding consumptive use, specifically, requesting project description, scope, costs, water requirements and financial project feasibility. The letter assigned a 90 day

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<sup>1</sup> Public record in the office of the State Engineer.

time limit to file the required information. The letter to the applicant was returned by the United States Postal Service labelled "Attempted-Not Known."<sup>2</sup> The letter to the agent was returned by the United States Postal Service labelled "Forward Expired."<sup>2</sup> To date the information requested has not been received from the applicant or agent.<sup>3</sup>

II.

On December 7, 1993, the agent David Causey was notified by certified mail, specifically, including a copy of the October 8, 1993, letter to Abe Fox. The letter assigned a 90 day time limit to file the required information.

III.

On December 23, 1993, agent David Causey submitted a letter notifying the State Engineer that Mr. Causey had received the correspondence dated December 7, 1993.<sup>1</sup> Mr. Causey indicated the required information would be sent promptly within the 90 day time limit as assigned by the December 7, 1993 letter. To date the information requested has not been received from the applicant or agent.<sup>3</sup>

CONCLUSIONS

I.

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

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to guard the public interest properly.<sup>5</sup>

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<sup>2</sup> See certified mail returned envelope on file, in the office of the State Engineer.

<sup>3</sup> A check of the record of the State Engineer indicates that no information has been received.

<sup>4</sup> NRS Chapters 533 and 534.

<sup>5</sup> NRS 533.375.

III.

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

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.<sup>6</sup>

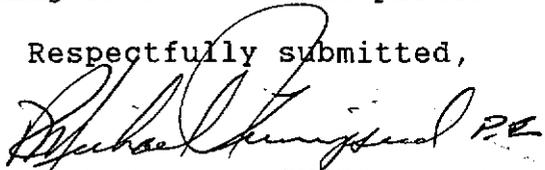
IV.

The applicant has failed to submit the information requested by the State Engineer's office. Therefore, sufficient information is not available to the State Engineer to guard the public interest properly.

RULING

Application 28142 is hereby denied on the grounds that the applicant has not submitted the information requested by the State Engineer's office and, therefore, the granting of said application without the additional information requested would not be in the public interest. No ruling is made on the protest.

Respectfully submitted,

  
E. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/DJL/pm

Dated this 16th day of  
March, 1994.