

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

IN THE MATTER OF APPLICATIONS 21090)
AND 30005 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF A SURFACE SOURCE)
WITHIN THE OWYHEE RIVER AREA)
HYDROGRAPHIC BASIN (37), ELKO)
COUNTY, NEVADA.)

RULING

5206

GENERAL

I.

Application 21090 was filed on February 20, 1963, by Archie Frank Corbari, Jr., to appropriate 5.7 cubic feet per second (cfs) of water from Deep Creek for irrigation and domestic purposes. The place of use is 318.7 acres located within a portion of Section 8, T.43N., R.55E., M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.43N., R.54E., M.D.B.&M.¹

II.

Application 30005 was filed on February 18, 1976, by Archie F. Corbari, Jr. to appropriate 10.0 cfs of water from Deep Creek for irrigation purposes. The place of use is 1,000 acres located within portions of Sections 13, 23, and 24, T.43N., R.54E. and portions of Sections 7 and 18, T.43N., R.55E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T.43N., R.54E., M.D.B.&M.²

III.

Application 21090 was timely protested by Timmons S. Smith primarily on the grounds that approval of the application would impair the protestant's existing rights on Deep Creek and that there is insufficient water to allow additional appropriations from Deep Creek.

¹ File No. 21090, official records in the Office of the State Engineer.

² File No. 30005, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

The applicant was notified by certified mail dated November 25, 2002, to advise this office in writing if it was interested in pursuing Application 21090. The applicant was warned that failure to respond within 30 days would result in denial of the application. The certified letter was returned to the Office of the State Engineer by the U.S. Postal Service stamped "Returned To Sender".¹ To date, no information on this matter has been submitted to the State Engineer's Office. The State Engineer finds that the applicant was properly notified of the request for additional information regarding Application 21090 and failed to respond.

II.

The applicant was notified by certified mail dated November 27, 2002, to advise this office in writing if it was interested in pursuing Application 30005. The applicant was warned that failure to respond within 30 days would result in denial of the application. The certified letter was returned to the Office of the State Engineer by the U.S. Postal Service stamped "Returned To Sender".² To date, no information on this matter has been submitted to the State Engineer's Office. The State Engineer finds that the applicant was properly notified of the request for additional information regarding Application 30005 and failed to respond.

III.

The State Engineer finds that it is the responsibility of the applicant, its' agent, or their successor in interest, to keep this office informed of a current mailing address.

IV.

The State Engineer finds that there has been no correspondence from the applicant regarding Application 21090 for at least 26 years.¹

V.

The State Engineer finds that there has been no correspondence from the applicant regarding Application 30005 for at least 26 years.²

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

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.⁴

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁵

- 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 was properly notified of the requirement for additional information concerning these applications and has failed to submit the information to the State Engineer's Office. The State Engineer concludes that the failure to express any interest in these applications for over 26 years and failure to maintain a current address demonstrates the applicant's lack of interest in pursuing Application 21090 and Application 30005. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue permits under applications for which no interest is expressed.

³ NRS chapter 533.

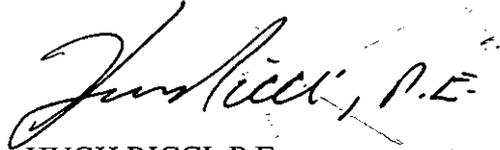
⁴ NRS § 533.375.

⁵ NRS § 533.370(3).

RULING

Application 21090 and Application 30005 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 protest to Application 21090.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 6th day of
February, 2003.