

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

IN THE MATTER OF APPLICATION 31356)
FILED TO APPROPRIATE THE PUBLIC)
WATERS AN UNDERGROUND SOURCE)
WITHIN THE STEPTOE VALLEY)
HYDROGRAPHIC BASIN (179), WHITE)
PINE COUNTY, NEVADA.)

RULING

#5410

GENERAL

I.

Application 31356 was filed on April 22, 1977, by Andrew H. 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 NW¼ of Section 29, T.20N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within NW¼ NW¼ of said Section 29.¹

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).² 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 Application 31356. The BLM informed the Office of the State Engineer that their records of the land described under the place of use of Application 31356 showed "No Case File in this section".¹

Under the remarks section of Application 31356, it is indicated that the application was filed in support of a Carey Act application. The Nevada Division of

¹ File No. 31356, official records in the Office of the State Engineer.

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

State Lands informed the Office of the State Engineer that the Carey Act application filed in support of Application 31356 was 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 Application 31356. 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 4, 2004, to submit additional information regarding Application 31356 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 application. Properly endorsed certified mail receipts were received in the Office of the State Engineer on March 11, 2004, for the certified letters to the applicant and his agent.¹ 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 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.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

³ NRS chapters 533 and 534.

⁴ NRS § 533.375.

⁵ NRS § 533.370(4).

- 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 18 years and the failure to submit requested information demonstrates the applicant's lack of interest in pursuing Application 31356. 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 a water right application in support of a DLE or Carey Act, where the BLM has "no case file in this section" 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

Application 31356 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.