

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

IN THE MATTER OF APPLICATION 33117)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE HOT CREEK VALLEY)
HYDROGRAPHIC BASIN (156), NYE)
COUNTY, NEVADA.)

RULING

4889

GENERAL

I.

Application 33117 was filed on August 10, 1977, by James H. and Pearl H. Bias to appropriate 2.7 cubic feet per second of underground water for irrigation and domestic purposes within 160 acres of land located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, both within T.7N., R.51E., M.D.B.&M. The proposed point of diversion is described as being located within NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 19.¹

FINDINGS OF FACT

I.

Application 33117 was filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of a Carey Act Entry application. By letter dated December 9, 1999, the United States Department of the Interior, Bureau of Land Management (BLM), was requested to provide information to the office of the State Engineer relating to the current status of the James H. and Pearl H. Bias Carey Act Entry application.¹ A timely response from the BLM was received in the office of the State Engineer that indicated that the BLM had no record of a Carey Act Entry application being filed in support of Application 33117. The State Engineer finds that the applicants have failed to initiate the procedure necessary to remove the land representing the place of use under the subject application from

¹ File No. 33117, official records in the office of the State Engineer.

federal control, therefore, said land remains under federal jurisdiction.

II.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 33117, is for the irrigation of 160 acres of land that were to be removed from federal control and transferred to the applicants through the filing and approval of a Carey Act Entry application. The State Engineer finds that the applicant's failure to file the required Carey Act Entry application removes the purpose for which Application 33117 was filed.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

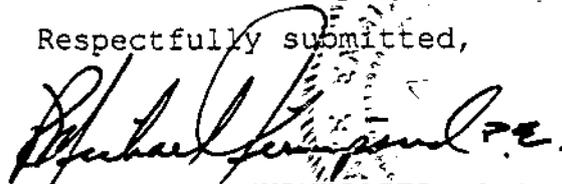
Application 33117 requests an appropriation of water for a project that does not exist. The State Engineer concludes that to approve a permit where the need to appropriate the water has ceased would threaten to prove detrimental to the public interest.

² NRS chapters 533 and 534.
³ NRS § 533.370(3).

RULING

Application 33117 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/dl

Dated this 31st day of
March, 2000.