

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

IN THE MATTER OF APPLICATIONS )  
31450 AND 31451 FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF )  
AN UNDERGROUND SOURCE WITHIN THE )  
RAILROAD VALLEY - NORTHERN PART )  
HYDROGRAPHIC BASIN (173B), NYE )  
COUNTY, NEVADA. )

RULING

**#5649**

GENERAL

I.

Application 31450 was filed on May 3, 1977, by Nugget Mining Company, Inc., later assigned to Great Basin Land Co., Inc., to appropriate 10.8 cubic feet per second (cfs) of underground water from the Railroad Valley-Northern Part Hydrographic Basin (173B) for irrigation and domestic purposes on 640 acres of land within Section 18, T.5N., R.55E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 18.<sup>1</sup>

II.

Application 31451 was filed on May 3, 1977, by Nugget Mining Company, Inc., later assigned to Great Basin Land Co., Inc., to appropriate 10.8 cfs of underground water from the Railroad Valley-Northern Part Hydrographic Basin (173B) for irrigation and domestic purposes on 640 acres of land within Section 17, T.5N., R.55E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 17.<sup>2</sup>

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<sup>1</sup> File No. 31450, official records in the Office of the State Engineer.

<sup>2</sup> File No. 31451, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Applications 31450 and 31451 were filed to appropriate underground water for use upon land that was to be removed from the federal domain, by what means is not self evident. In October 2005 the Division of Nevada State Lands was requested to provide information to the Office of the State Engineer relating to the current status of Nugget Mining Company Carey Act Applications. Records received from the Division of Nevada State Lands indicated that the Applicant's Carey Act-Desert Land Entry Applications, State Lands #0010 and #0221, for the Railroad Valley-Northern Part Hydrographic Basin were cancelled on May 30, 1985, and August 16, 1984, respectively. An Division of Nevada State Lands memorandum, dated February 6, 1986, in the case file indicates the Applicant was informed on March 16, 1981, that Sections 17 and 18, T.5N., R.55E., M.D.B.&M. were not part of the Carey Act-Desert Land Entry Application, State Lands #0010. The Applicant responded on March 27, 1981, indicating that the Carey Act Application would not be changed. The State Engineer finds that the Applicant did not make a Carey Act-Desert Land Entry Application for water right Applications 31450 and 31451 with the proper governing agency.<sup>1,2</sup>

II.

In November 2005 the United States Department of the Interior, Bureau of Land Management (BLM) - Tonopah Office was contacted by phone to provide information to the Office of the State Engineer regarding the status of any Desert Land Entry applications by Nugget Mining Company. The response from the BLM indicated that neither the Applicant nor anyone on their behalf has ever made an application for a federal Desert Land Entry for the place of use described under Applications 31450 and 31451. The State Engineer finds that

the Applicant has made no additional attempts to gain control of the place of use of lands as described under Applications 31450 and 31451.<sup>1,2</sup>

### III.

A water right application is filed to request an appropriation of water to be used for a specific purpose within a well defined place of use, which is represented under Applications 31450 and 31451 as the irrigation of 1,280 acres of land that would have to be removed from federal jurisdiction. The Applicant's Carey Act-Desert Land Entry Applications, State Lands #0010 and #0221, did not include the lands described as the place of use under Applications 31450 and 31451 and no federal Desert Land Entry application was ever filed by or for the Applicant; therefore, the federal government retains the ownership of the land requested for removal. The State Engineer finds that the purpose for which Applications 31450 and 31451 were filed does not exist; therefore, the necessity to divert water as proposed under the subject applications have ceased.

### CONCLUSIONS

#### I.

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

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

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

<sup>4</sup> NRS § 533.370(5).

- 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.

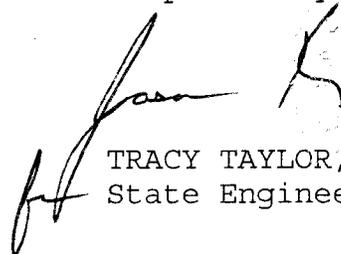
**III.**

Applications 31450 and 31451 sought to irrigate land that had to be removed from federal jurisdiction. The Applicant's Carey Act-Desert Land Entry Application did not include the lands under Applications 31450 and 31451 and no record of a federal Desert Land Entry Application can be found; therefore, the ownership of the lands requested for removal are retained by the federal government. The State Engineer concludes that to approve a water right permit for a project where the applicant cannot place the water to beneficial use would threaten to prove detrimental to the public interest.

**RULING**

Applications 31450 and 31451 are hereby denied on the grounds that the approval would threaten to prove detrimental to the public interest.

Respectfully submitted,

 P.E.  
TRACY TAYLOR, P.E.  
State Engineer

TT/WHR/jm

Dated this 25th day of  
August, 2006.