

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

IN THE MATTER OF APPLICATIONS 31472,)
31473, 31474 AND 31476 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE HOT)
CREEK VALLEY HYDROGRAPHIC BASIN)
(156), NYE COUNTY, NEVADA.)

RULING

#5651

GENERAL

I.

Application 31472 was filed on May 4, 1977, by the Hot Creek Irrigation Co., Inc., later assigned to Great Basin Land Co., Inc., to appropriate 10.8 cubic feet per second (cfs) of underground water from the Hot Creek Valley Hydrographic Basin for irrigation and domestic purposes on 640 acres of land within Section 11, T.4N., R.50E., 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 11.¹

II.

Application 31473 was filed on May 4, 1977, by the Hot Creek Irrigation Co., Inc., later assigned to Great Basin Land Co., Inc., to appropriate 10.8 cfs of underground water from the Hot Creek Valley Hydrographic Basin for irrigation and domestic purposes on 640 acres of land within Section 2, T.4N., R.50E., 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 2.²

III.

Application 31474 was filed on May 4, 1977, by the Hot Creek Irrigation Co., Inc., later assigned to Great Basin Land Co., Inc., to appropriate 10.8 cfs of underground water from the Hot Creek Valley Hydrographic Basin for irrigation and domestic purposes on 640 acres of land within Section 12, T.4N., R.50E., M.D.B.&M. The proposed point of diversion is described as being located the within the NW $\frac{1}{4}$ NE $\frac{1}{4}$, of said Section 12.³

¹ File No. 31472, official records in the Office of the State Engineer.

² File No. 31473, official records in the Office of the State Engineer.

³ File No. 31474, official records in the Office of the State Engineer.

IV.

Application 31476 was filed on May 4, 1977, by the Hot Creek Irrigation Co., Inc., later assigned to Great Basin Land Co., Inc., to appropriate 10.8 cfs of underground water from the Hot Creek Valley Hydrographic Basin for irrigation and domestic purposes on 640 acres of land within Section 14, T.4N., R.50E., 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 14.⁴

FINDINGS OF FACT

I.

Applications 31472, 31473, 31474 and 31476 were filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of the Applicant's Carey Act-Desert Land Entry Application, State Lands #0032. 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 the Hot Creek Irrigation Co., Inc., Carey Act Application. Records received from the Division of Nevada State Lands indicated that the Applicant's Carey Act-Desert Land Entry Application for the Hot Creek Valley Hydrographic Basin was cancelled on August 14, 1984.^{1,2,3,4} The State Engineer finds that the Applicant's Carey Act-Desert Land Entry Application, State Lands #0032 has been terminated by the proper governing agency.

II.

In November 2005 the United States Department of the Interior, Bureau of Land Management (BLM) - Ely Office was contacted by phone to provide information to the Office of the State Engineer regarding the status of any Hot Creek Irrigation Co., Inc., Carey Act -Desert Land Entry applications in T.4N., R.50E., M.D.B.&M. The timely response from the BLM indicated that on January 2, 1981, the State of Nevada filed a Desert Land Entry Application with the BLM Case #NVN 031758. The "Remarks" section on the BLM's Serial Register page indicates this filing was on behalf of Hot Creek Irrigation Co., State Land Application #0032. The Serial Register pages also show that the lands requested under Water Right Applications 31472, 31473, 31474, and 31476 were determined to be unsuitable for Desert Land Entry on September 2, 1984.^{1,2,3,4} The State Engineer finds that the Applicant's attempts to gain control of the place of use

⁴ File No. 31476, official records in the Office of the State Engineer.

as described under Applications 31472, 31473, 31474 and 31476 has been terminated by the proper governing federal agency.

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 31472, 31473, 31474 and 31476 as the irrigation of 2,560 acres of land, which were to be removed from federal jurisdiction by the approval of the Applicant's respective Carey Act-Desert Land Entry Application, State Lands #0032. The federal Desert Land Entry application filed by the State of Nevada, BLM Case #NVN 031758, on behalf of Hot Creek Irrigation Co., was, in part, denied for unsuitability and the ownership of the land requested for removal are retained by the federal government.^{1,2,3,4} The State Engineer finds that the purpose for which Applications 31472, 31473, 31474, and 31476 were filed no longer exists; therefore, the necessity to divert water as proposed under the subject applications has ceased.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- 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.

⁵ NRS chapters 533 and 534.

⁶ NRS § 533.370(5).

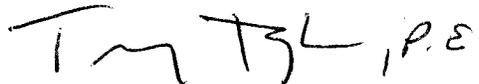
III.

Applications 31472, 31473, 31474, and 31476 sought to irrigate land that was to be removed from federal jurisdiction by the approval of the Hot Creek Irrigation Company's Carey Act-Desert Land Entry Application, State Lands #0032. The Desert Land Entry application filed by the State of Nevada, BLM Case #NVN 031758, on behalf of the Applicant, was, in part, denied for unsuitability and the ownership of the lands requested for removal was retained by the federal government. The State Engineer concludes that to approve a water right permit for a project that where the applicant cannot place the water to beneficial use would threaten to prove detrimental to the public interest.

RULING

Applications 31472, 31473, 31474, and 31476 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/WHR/jm

Dated this 25th day of
August, 2006.