

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

IN THE MATTER OF APPLICATIONS 65509,)
65510, 65511, 65512, 65513, 65514,)
65515, 65516, 65517, 65518, 65519,)
65520, 65521, 65522, 65523, 65524,)
65525, 65526, 65527, 65528, 65529,)
65530, 65531, 65532, 65533, 65549,)
65550, 65551, 65552, 65553, 65554,)
65555, 65557 AND 65558 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE RAILROAD)
VALLEY - NORTHERN PART HYDROGRAPHIC)
BASIN (173B), NYE COUNTY, NEVADA.)

RULING
#5668

GENERAL

I.

Application 65509 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cubic feet per second (cfs) of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 10, T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 10.¹

II.

Application 65510 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 10, T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 10.²

¹ File No. 65509, official records in the Office of the State Engineer.

² File No. 65510, official records in the Office of the State Engineer.

III.

Application 65511 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N $\frac{1}{2}$ of Section 11, T.4N., R.53E., 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 11.³

IV.

Application 65512 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S $\frac{1}{2}$ of Section 11, T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 11.⁴

V.

Application 65513 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N $\frac{1}{2}$ of Section 12, T.4N., R.53E., 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 12.⁵

VI.

Application 65514 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S $\frac{1}{2}$ of Section 12,

³ File No. 65511, official records in the Office of the State Engineer.

⁴ File No. 65512, official records in the Office of the State Engineer.

⁵ File No. 65513, official records in the Office of the State Engineer.

T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 12.⁶

VII.

Application 65515 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 13, T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 13.⁷

VIII.

Application 65516 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 13, T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 13.⁸

IX.

Application 65517 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 14, T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 14.⁹

X.

Application 65518 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation

⁶ File No. 65514, official records in the Office of the State Engineer.

⁷ File No. 65515, official records in the Office of the State Engineer.

⁸ File No. 65516, official records in the Office of the State Engineer.

⁹ File No. 65517, official records in the Office of the State Engineer.

and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 14, T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 14.¹⁰

XI.

Application 65519 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 15, T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 15.¹¹

XII.

Application 65520 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 15, T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 15.¹²

XIII.

Application 65521 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 7,

¹⁰ File No. 65518, official records in the Office of the State Engineer.

¹¹ File No. 65519, official records in the Office of the State Engineer.

¹² File No. 65520, official records in the Office of the State Engineer.

T.4N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 7.¹³

XIV.

Application 65522 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 7, T.4N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 7.¹⁴

XV.

Application 65523 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 9, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 9.¹⁵

XVI.

Application 65524 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 9, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 9.¹⁶

XVII.

Application 65525 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation

¹³ File No. 65521, official records in the Office of the State Engineer.

¹⁴ File No. 65522, official records in the Office of the State Engineer.

¹⁵ File No. 65523, official records in the Office of the State Engineer.

¹⁶ File No. 65524, official records in the Office of the State Engineer.

and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 10, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 10.¹⁷

XVIII.

Application 65526 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 10, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 10.¹⁸

XIX.

Application 65527 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 15, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 15.¹⁹

XX.

Application 65528 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 15, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is

¹⁷ File No. 65525, official records in the Office of the State Engineer.

¹⁸ File No. 65526, official records in the Office of the State Engineer.

¹⁹ File No. 65527, official records in the Office of the State Engineer.

described as being located within the NW¼ SE¼ of said Section 15.²⁰

XXI.

Application 65529 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 22, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 22.²¹

XXII.

Application 65530 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 22, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 22.²²

XXIII.

Application 65531 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 23, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 23.²³

²⁰ File No. 65528, official records in the Office of the State Engineer.

²¹ File No. 65529, official records in the Office of the State Engineer.

²² File No. 65530, official records in the Office of the State Engineer.

²³ File No. 65531, official records in the Office of the State Engineer.

XXIV.

Application 65532 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 23, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 23.²⁴

XXV.

Application 65533 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 20, T.6N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 20.²⁵

XXVI.

Application 65549 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 33, T.6N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 33.²⁶

²⁴ File No. 65532, official records in the Office of the State Engineer.

²⁵ File No. 65533, official records in the Office of the State Engineer.

²⁶ File No. 65549, official records in the Office of the State Engineer.

XXVII.

Application 65550 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 33, T.6N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 33.²⁷

XXVIII.

Application 65551 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 28, T.6N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 28.²⁸

XXIX.

Application 65552 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 28, T.6N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 28.²⁹

²⁷ File No. 65550, official records in the Office of the State Engineer.

²⁸ File No. 65551, official records in the Office of the State Engineer.

²⁹ File No. 65552, official records in the Office of the State Engineer.

XXX.

Application 65553 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 21, T.6N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 21.³⁰

XXXI.

Application 65554 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 21, T.6N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 21.³¹

XXXII.

Application 65555 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 20, T.6N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 20.³²

³⁰ File No. 65553, official records in the Office of the State Engineer.

³¹ File No. 65554, official records in the Office of the State Engineer.

³² File No. 65555, official records in the Office of the State Engineer.

XXXIII.

Application 65557 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the N½ of Section 3, T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 3.³³

XXXIV.

Application 65558 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 3, T.4N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 3.³⁴

XXXV.

Applications 65509, 65510, 65511, 65512, 65513, 65514, 65515, 65516, 65517, 65518, 65519, 65520, 65521, 65522, 65523, 65524, 65525, 65526, 65527, 65528, 65529, 65530, 65531, 65532, 65533, 65549, 65550, 65551, 65552, 65553, 65554, 65555, 65557 and 65558 were timely protested by Great Basin Land Co., Inc., Great Basin Holding Co., Inc., U.S.D.O.I., Bureau of Land Management (BLM) and the Las Vegas Valley Water District on grounds not addressed by this ruling.¹⁻³⁴

FINDINGS OF FACT

I.

Applications 65509, 65510, 65511, 65512, 65513, 65514, 65515, 65516, 65517, 65518, 65519, 65520, 65521, 65522, 65523, 65524, 65525, 65526, 65527, 65528, 65529, 65530, 65531, 65532, 65533, 65549, 65550, 65551, 65552, 65553, 65554, 65555, 65557 and 65558

³³ File No. 65557, official records in the Office of the State Engineer.

³⁴ File No. 65558, official records in the Office of the State Engineer.

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 federal Desert Land Entry applications (DLE). On February 7, 2003, the U.S. Bureau of Land Management (BLM), Tonopah Office was contacted by the Office of the State Engineer to determine the status of the applicant's DLE applications. The BLM reported that no DLE applications had been filed in support of the water right Applications 65509 through 65558. On February 11, 2003, the Applicant was sent a letter of interest and requested to respond to the office of the State Engineer in writing within 30 days. On March 6, 2003, Randy Spevak of CCS Farms responded for the Applicant indicating that they were conducting feasibility studies and meeting with the BLM to determine the best method for obtaining the lands described in the water right applications. Mr. Spevak indicated that the lands described in the water right applications were not listed for disposal in the 1997 Tonopah Resource Management Plan. Discussions in November 2005 with the BLM, Tonopah Office staff indicates that a revision of the 1997 Tonopah Resource Management Plan has been postponed indefinitely and that it will remain in effect until changed.¹ The State Engineer finds that the lands comprising the proposed places of use requested under said applications are not available for Desert Land Entry.

II.

In November 2005, the BLM, Tonopah Office was visited by staff personnel from the Office of the State Engineer to determine the current status of the Applicant's DLE Applications. No records, current or historical, could be located that indicated the Applicant has ever filed DLE applications with the BLM. The State Engineer finds that in five (5) years, the Applicant has made no DLE applications to gain control of the places of use described under Applications 65509, 65510, 65511, 65512, 65513, 65514, 65515, 65516, 65517, 65518, 65519, 65520, 65521, 65522,

65523, 65524, 65525, 65526, 65527, 65528, 65529, 65530, 65531, 65532, 65533, 65549, 65550, 65551, 65552, 65553, 65554, 65555, 65557 and 65558 with the proper governing federal agency.¹⁻³⁴

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 65509, 65510, 65511, 65512, 65513, 65514, 65515, 65516, 65517, 65518, 65519, 65520, 65521, 65522, 65523, 65524, 65525, 65526, 65527, 65528, 65529, 65530, 65531, 65532, 65533, 65549, 65550, 65551, 65552, 65553, 65554, 65555, 65557 and 65558 as the irrigation of 10,880 acres of land, which were to be removed from federal jurisdiction by the approval of the Applicant's DLE applications. No records exist indicating the Applicant has ever made any DLE applications with the BLM, therefore the ownership of the land requested for removal is retained by the federal government. The State Engineer finds that the purpose for which said applications were filed does not exist; 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.³⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³⁶

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

³⁵ NRS chapters 533 and 534.

³⁶ 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.

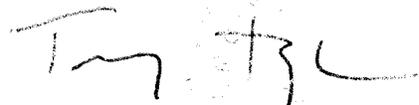
III.

The purpose for which Applications 65509, 65510, 65511, 65512, 65513, 65514, 65515, 65516, 65517, 65518, 65519, 65520, 65521, 65522, 65523, 65524, 65525, 65526, 65527, 65528, 65529, 65530, 65531, 65532, 65533, 65549, 65550, 65551, 65552, 65553, 65554, 65555, 65557 and 65558 were filed does not exist because no records exist indicating the Applicant ever made DLE applications with the BLM. The State Engineer concludes that to approve a water right permit for a project that does not exist would threaten to prove detrimental to the public interest.

RULING

Applications 65509, 65510, 65511, 65512, 65513, 65514, 65515, 65516, 65517, 65518, 65519, 65520, 65521, 65522, 65523, 65524, 65525, 65526, 65527, 65528, 65529, 65530, 65531, 65532, 65533, 65549, 65550, 65551, 65552, 65553, 65554, 65555, 65557 and 65558 are hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/WHR/jm

Dated this 3rd day of
October, 2006.