

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

IN THE MATTER OF APPLICATIONS )  
65535, 65536, 65537, 65538, 65539, )  
65540, 65541, 65542, 65543, 65544, )  
65545, 65546, 65547, 65548 AND )  
65556 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE RAILROAD VALLEY - )  
SOUTHERN PART HYDROGRAPHIC BASIN )  
(173A), NYE COUNTY, NEVADA. )

RULING

**# 5670**

GENERAL

I.

Application 65535 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 - Southern 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 4, T.2N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 4.<sup>1</sup>

II.

Application 65536 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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.2N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 3.<sup>2</sup>

III.

Application 65537 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern Part Hydrographic Basin for irrigation

<sup>1</sup> File No. 65535, official records in the Office of the State Engineer.

<sup>2</sup> File No. 65536, 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 N $\frac{1}{2}$  of Section 3, T.2N., 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 3.<sup>3</sup>

**IV.**

Application 65538 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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 34, T.3N., 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 34.<sup>4</sup>

**V.**

Application 65539 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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 34, T.3N., 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 34.<sup>5</sup>

**VI.**

Application 65540 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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 33, T.3N., 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 33.<sup>6</sup>

**VII.**

Application 65541 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the

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<sup>3</sup> File No. 65537, official records in the Office of the State Engineer.

<sup>4</sup> File No. 65538, official records in the Office of the State Engineer.

<sup>5</sup> File No. 65539, official records in the Office of the State Engineer.

<sup>6</sup> File No. 65540, official records in the Office of the State Engineer.

Railroad Valley - Southern 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.3N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 33.<sup>7</sup>

**VIII.**

Application 65542 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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.3N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 28.<sup>8</sup>

**IX.**

Application 65543 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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.3N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 28.<sup>9</sup>

**X.**

Application 65544 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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 27, T.3N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 27.<sup>10</sup>

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<sup>7</sup> File No. 65541, official records in the Office of the State Engineer.

<sup>8</sup> File No. 65542, official records in the Office of the State Engineer.

<sup>9</sup> File No. 65543, official records in the Office of the State Engineer.

<sup>10</sup> File No. 65544, official records in the Office of the State Engineer.

**XI.**

Application 65545 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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 27, T.3N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 27.<sup>11</sup>

**XII.**

Application 65546 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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.3N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 22.<sup>12</sup>

**XIII.**

Application 65547 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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.3N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 21.<sup>13</sup>

**XIV.**

Application 65548 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern Part Hydrographic Basin for irrigation

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<sup>11</sup> File No. 65545, official records in the Office of the State Engineer.

<sup>12</sup> File No. 65546, official records in the Office of the State Engineer.

<sup>13</sup> File No. 65547, 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 21, T.3N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 21.<sup>14</sup>

**XV.**

Application 65556 was filed on September 22, 1999, by CSS Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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.3N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 22.<sup>15</sup>

**XVI.**

Applications 65535, 65536, 65537, 65538, 65539, 65540, 65541, 65542, 65543, 65544, 65545, 65546, 65547, 65548, and 65556 were timely protested by Great Basin Land Co., Inc., Great Basin Holding Co., Inc., U.S. Bureau of Land Management (BLM), Las Vegas Valley Water District, and Joe B. and Susan L. Fallini on grounds not addressed by this ruling.<sup>1,2,3,4,5,6,7,8,9,10,11,12,13,14,15</sup>

**FINDINGS OF FACT**

**I.**

Applications 65535, 65536, 65537, 65538, 65539, 65540, 65541, 65542, 65543, 65544, 65545, 65546, 65547, 65548, and 65556 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 application (DLE). On February 7, 2003, the BLM, Tonopah Office was contacted by the Office of the State Engineer to determine the status of the Applicant's Desert Land Entry Applications. The BLM reported that no Desert Land Entry applications had been filed in support of the

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<sup>14</sup> File No. 65548, official records in the Office of the State Engineer.

<sup>15</sup> File No. 65556, official records in the Office of the State Engineer.

water right Applications 65535 through 65548 and 65556. On February 11, 2003, the Applicant was sent a letter to determine any continued interest in pursuing the applications and requested a response 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 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 BLM Tonopah Office staff indicates that revision of the 1997 Tonopah Resource Management Plan has been postponed indefinitely and that it will remain in effect until changed.<sup>1</sup> The State Engineer finds that the lands requested under Applications 65535, 65536, 65537, 65538, 65539, 65540, 65541, 65542, 65543, 65544, 65545, 65546, 65547, 65548, and 65556 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 Desert Land Entry Application. No records, current or historical, could be located that indicated the Applicants have ever filed for a Desert Land Entry Application with the BLM. The State Engineer finds that in seven years the Applicant has made no Desert Land Entry Application for control of the places of use described under Applications 65535, 65536, 65537, 65538, 65539, 65540, 65541, 65542, 65543, 65544, 65545, 65546, 65547, 65548, and 65556 with the proper governing federal agency.<sup>1,2,3,4,5,6,7,8,9,10,11,12,13,14,15</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 65535, 65536, 65537, 65538, 65539, 65540, 65541, 65542, 65543,

65544, 65545, 65546, 65547, 65548, and 65556 as the irrigation of 4800 acres of land, which were to be removed from federal jurisdiction by the approval of the Desert Land Entry applications. No records exist indicating the Applicant has ever made any Desert Land Entry application with the BLM and the ownership of the land requested for removal is retained by the federal government. The State Engineer finds that the purpose for which Applications 65535, 65536, 65537, 65538, 65539, 65540, 65541, 65542, 65543, 65544, 65545, 65546, 65547, 65548, and 65556 were filed does not exist; therefore, the necessity to divert water as proposed under the subject applications does not exist.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>16</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>17</sup>

- 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.

#### III.

The purpose for which Applications 65535, 65536, 65537, 65538, 65539, 65540, 65541, 65542, 65543, 65544, 65545, 65546, 65547, 65548, and 65556 were filed does not exist because no records exist indicating the Applicant ever made a Desert Land Entry application with the BLM or was ever granted entry. The

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<sup>16</sup> NRS chapters 533 and 534.

<sup>17</sup> NRS § 533.370(5).

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 65535, 65536, 65537, 65538, 65539, 65540, 65541, 65542, 65543, 65544, 65545, 65546, 65547, 65548, and 65556 are hereby denied on the grounds that their 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 10th day of  
October, 2006.