

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

IN THE MATTER OF APPLICATIONS 32965, )  
38747, 38844 AND 38845 FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF AN )  
UNDERGROUND SOURCE WITHIN THE HOT )  
CREEK HYDROGRAPHIC BASIN (156), NYE )  
COUNTY, NEVADA. )

**RULING**

**#5676**

**GENERAL**

**I.**

Application 32965 was filed on July 29, 1977, by Joe B. Fallini, Jr. to appropriate 2.7 cubic feet per second (cfs) of underground water from the Hot Creek Valley Hydrographic Basin for irrigation and domestic purposes on 160 acres of land within the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$ , of Section 19, T.4N., R.52E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 19, T.4N., R.52E., M.D.B.&M.<sup>1</sup>

**II.**

Application 38747 was filed on August 6, 1979, by Joe B., Helen Fallini, and Joe B. Fallini, Jr. to appropriate 6.0 cfs of underground water from the Hot Creek Valley Hydrographic Basin for irrigation and domestic purposes on 640 acres of land within Section 13, T.4N., R.51E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 13, T.4N., R.51E., M.D.B.&M.<sup>2</sup>

**III.**

Application 38844 was filed on August 20, 1979, by Joe B. Fallini, Jr. to appropriate 5.4 cfs of underground water from the Hot Creek Valley Hydrographic Basin for irrigation and domestic purposes on 290 acres of land within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 13, T.4N., R.51E., M.D.B.&M., and the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18, and the N $\frac{1}{2}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 19

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<sup>1</sup> File No. 32965, official records in the Office of the State Engineer.

<sup>2</sup> File No. 38747, official records in the Office of the State Engineer.

all within T.4N., R.52E., M.D.B.&M. The proposed point of diversion is described as being located within NE¼ SW¼ of Section 13, T.4N., R.51E., M.D.B.&M.<sup>3</sup>

#### IV.

Application 38845 was filed on August 20, 1979, by Joe B. Fallini, Jr. to appropriate 2.7 cfs of underground water from the Hot Creek Valley Hydrographic Basin for irrigation and domestic purposes on 130 acres of land within the SE¼ NE¼ of Section 13, T.4N., R.51E., M.D.B.&M., the SW¼ SW¼ of Section 18, and the NW¼ NW¼, NW¼ SE¼ of Section 19 all within T.4N., R.52E., M.D.B.&M. The proposed point of diversion is described as being located within SE¼ NW¼ of Section 19, T.4N., R.52E., M.D.B.&M.<sup>4</sup>

### FINDINGS OF FACT

#### I.

Application 32965 was 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 #1245. In October 2005, the Office of Nevada State Lands was visited to collect information relating to the current status of the Joe B. Fallini, Jr. Carey Act Application. Collected data indicated that this application was cancelled on September 16, 1980, by Nevada State Lands, because the Applicant withdrew his Carey Act Application and chose to apply for a federal Desert Land Entry (DLE). The State Engineer finds that the Applicant's Carey Act-Desert Land Entry Application, State Lands #1245 was withdrawn and terminated by the Applicant.<sup>1</sup>

#### II.

In November 2005, the United States Department of the Interior, Bureau of Land Management (BLM) - Tonopah Office was contacted by telephone to provide information to the Office of the State Engineer regarding the status of any Desert Land Entry applications for Sections 13, T.4N., R.51E., and Sections 18 and 19, T.4N., R.52E., M.D.B.&M. The BLM responded that no Desert Land Entry applications had ever been made for those areas; however, there was a record of a Federal Land Policy and Management Act (FLPMA)-Public Land Sale case file for Joe B. Fallini, Jr. for the very same area. Later in November 2005, the BLM - Tonopah Office was visited

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<sup>3</sup> File No. 38844, official records in the Office of the State Engineer.

<sup>4</sup> File No. 38845, official records in the Office of the State Engineer.

to collect information for the Office of the State Engineer regarding the status of the (FLPMA)-Public Land Sale for Joe B. Fallini, Jr. and the relation to Water Rights Applications 32965, 38747, 38844 and 38845. The Bureau of Land Management records, BLM Case #NVN 036832 for Joe B. Fallini, Jr., showed that a sale was held on September 30, 1983, for the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 13, T.4N., R.51E., and the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18, and the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$  NW $\frac{1}{2}$  and N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 19, all within T.4N., R.52E., M.D.B.&M. This area approximately corresponds to the places of use for Applications 32965, 38747, 38844 and 38845 and a portion of the place of use for Application 38147, which included all of Section 13, T.4N., R.51E. The serial register for case file #NVN 036832, shows the submitted bid was rejected the same day as the sale and the public land sale was denied on October 1, 1983. The BLM closed the case file #NVN 036832 for Joe B. Fallini, Jr. on December 16, 2000. The State Engineer finds that Applications 32965, 38747, 38844 and 38845 are not associated with a federal or Carey Act Desert Land Entry application and, that the Applicant's attempt to gain control of the places of use described under Applications 32965, 38747, 38844 and 38845 was terminated by the proper governing agency,  
1,2,3,4

### 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 32965, 38747, 38844 and 38845 as lands, which were to be removed from federal jurisdiction by the approval of the Applicants' FLPMA Public Land Sale, BLM Case #NVN 036832. The BLM rejected the Applicants' bid for the land and the federal government retains the ownership of the land requested for removal. The State Engineer finds that the purpose for which Applications 32965, 38747, 38844, and 38845 were filed no longer exists; therefore, the necessity to divert water as proposed under the subject applications has ceased.<sup>1,2,3,4</sup>

## CONCLUSIONS

### I.

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

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<sup>5</sup> NRS chapters 533 and 534.

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>6</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.

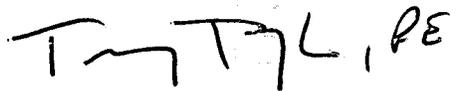
**III.**

The Applicants' attempt to gain control of the public lands under Applications 32965, 38747, 38844, and 38845 through the FLPMA Public Land Sale, BLM Case # NVN 036832 was rejected by the BLM; therefore, the ownership of the lands requested for removal are retained by the federal government, and the necessity to divert water as proposed under the subject applications has ceased and the Applicants cannot demonstrate an ability to place the water to beneficial use. The State Engineer concludes that to approve water right permits for projects that no longer exist would threaten to prove detrimental to the public interest.

**RULING**

Applications 32965, 38747, 38844, and 38845 are hereby denied on the grounds that the approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/WHR/jm

Dated this 30th day of

November, 2006.

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<sup>6</sup> NRS § 533.370(5).