

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

IN THE MATTER OF APPLICATIONS)
33107, 33108, AND 33109 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE)
WITHIN THE RAILROAD VALLEY -)
NORTHERN PART HYDROGRAPHIC)
BASIN (173B), NYE COUNTY, NEVADA.)

RULING
5697

GENERAL

I.

Application 33107 was filed on August 10, 1977, by Marcella G. Waller to appropriate 2.70 cubic feet per second (cfs) of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 160 acres of land within the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 12, T.9N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T.9N., R.57E., M.D.B.&M.¹

II.

Application 33108 was filed on August 10, 1977, by Robert A. Waller to appropriate 2.70 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 160 acres of land within the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 1, T.9N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within the Lot 1, Section 1, T.9N., R.57E., M.D.B.&M.²

III.

Application 33109 was filed on August 10, 1977, by Frank Halstead to appropriate 2.70 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 160 acres of land within the E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 12, T.9N., R.57E., M.D.B.&M. The

¹ File No. 33107, official records in the Office of the State Engineer.

² File No. 33108, official records in the Office of the State Engineer.

proposed point of diversion is described as being located within the NW¼ SE¼ of Section 12, T.9N., R.57E., M.D.B.&M.³

FINDINGS OF FACT

I.

Applications 33107, 33108, and 33109 were filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of the Applicants' Carey Act-Desert Land Entry Applications, State Lands #1108, 1109, and 1106, respectively. In October 2005, the Office of Nevada State Lands was visited to collect information for the Office of the State Engineer relating to the current status of these Carey Act Applications. The case files for these Carey Act Applications were missing, but a summary record received from the Office of Nevada State Lands indicated that these Carey Act-Desert Land Entry Applications for the Railroad Valley - Northern Part Hydrographic Basin had been cancelled; State Lands #1108 and #1109 on May 29, 1985, and #1106 on June 14, 1985.^{1,2,3,4} The State Engineer finds that the Applicants' Carey Act-Desert Land Entry Applications, State Lands #1108, 1109, and 1106 that correspond to water right Applications 33107, 33108, and 33109 were terminated by the proper governing agency.

II.

In November 2005, the United States Department of the Interior, Bureau of Land Management (BLM) - Tonopah Office was visited to provide information to the Office of the State Engineer regarding the current status of these Carey Act-Desert Land Entries. The BLM data search indicated that none of the Applicants, or anyone on their behalf, has ever made an application for a federal Desert Land Entry.^{1,2,3,4} The State Engineer finds that the Applicants have made no additional attempts to gain control of the place of use of lands as described under Applications 33107, 33108, and 33109 with the BLM and there is no evidence the Applicants own or control the proposed places of use.

³ File No. 33109, official records in the Office of the State Engineer.

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 33107, 33108, and 33109 as the irrigation of 480.00 acres of land which were to be removed from federal jurisdiction by the approval of the Applicants' respective Carey Act-Desert Land Entry Application, State Lands #1108, 1109, and 1106. The case files for these Carey Act-Desert Land Entry applications were closed by the Office of Nevada State Lands and no federal Desert Land Entry applications, by or on behalf of the Applicants, have been made to the BLM; therefore, the ownership of the land requested for removal is retained by the federal government.^{1,2,3,4} The State Engineer finds that the purpose for which Applications 33107, 33108, and 33109 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.⁴

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

- 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 Office of State Lands case files #1108, 1109, and 1106 for Carey Act-Desert Land Entry were closed by the Office of Nevada State Lands and no federal Desert Land Entry applications, by or on behalf of the Applicants, have been made

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.370(5).

to the BLM; therefore, the necessity to divert water as proposed under Applications 33107, 33108, and 33109 has ceased. 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 33107, 33108, and 33109 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

HR/WHR/jm

Dated this 8th day of
December, 2006.