

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

IN THE MATTER OF APPLICATIONS 33581)
AND 33582 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE RAILROAD VALLEY -)
NORTHERN PART HYDROGRAPHIC BASIN)
(173B), NYE COUNTY, NEVADA.)

RULING
5698

GENERAL

I.

Application 33581 was filed on September 12, 1977, by Wesley Glenn Dean 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 150 acres of land within the SW $\frac{1}{4}$ of Section 33, T.8N., R.56E., 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 said Section 33.¹

II.

Application 33582 was filed on September 12, 1977, by Lillie Joe Dean to appropriate 2.70 cfs of underground water from the Railroad Valley-Northern Part Hydrographic Basin for irrigation and domestic purposes on 140 acres of land within the NW $\frac{1}{4}$ of Section 33, T.8N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 33.²

FINDINGS OF FACT

I.

Applications 33581 and 33582 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 #1446 and 1445, 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 the Wesley Glen Dean and Lillie Joe Dean Carey Act

¹ File No. 33851, official records in the Office of the State Engineer.

² File No. 33852, official records in the office of the State Engineer.

Applications. Records received from the Office of Nevada State Lands indicated that the Applicants' Carey Act-Desert Land Entry Applications for the Railroad Valley-Northern Part Hydrographic Basin were cancelled; State Lands #1446 on June 20, 1985, and #1445 on June 14, 1985.^{1,2} The State Engineer finds that the Applicants' Carey Act-Desert Land Entry Applications, State Lands #1446 and 1445 have been 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 collect information for the Office of the State Engineer regarding the status of any Carey Act -Desert Land Entry applications by Wesley Glen Dean and Lillie Joe Dean. The BLM record search, indicated that neither Wesley Glen Dean, Lillie Joe Dean, or anyone on their behalf has ever made an application for a federal Desert Land Entry.^{1,2} 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 33581 and 33582 with the Bureau of Land Management and there is no evidence of any ownership or control of the proposed places of use.

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 33581 and 33582 as the irrigation of 290.00 acres of land, which were to be removed from federal jurisdiction by the approval of the Applicants' respective Carey Act-Desert Land Entry Applications, State Lands #1446 and 1445, respectively, which were cancelled in June 1985. No federal Desert Land Entry applications were ever filed by or for the Applicants and the ownership of the land requested for removal is retained by the federal government.^{1,2} The State Engineer finds that the purpose for which Applications 33581 and 33582 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.³

³ NRS chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- 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.

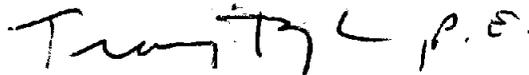
III.

Applications 33581 and 33582 sought to irrigate land that was to be removed from federal jurisdiction by the approval of the Applicants' Carey Act-Desert Land Entry Applications, State Lands #1446 and 1445, which were cancelled in June 1985 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 no longer exists would threaten to prove detrimental to the public interest.

RULING

Applications 33581 and 33582 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

HR/WHR/jm

Dated this 8th day of

December, 2006.

⁴ NRS § 533.370(5).