

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

IN THE MATTER OF APPLICATIONS 34380)
AND 34381 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE RAILROAD VALLEY -)
NORTHERN PART HYDROGRAPHIC BASIN)
(173B), NYE COUNTY, NEVADA.)

RULING
5699

GENERAL

I.

Application 34380 was filed on October 25, 1977, by Gloria J. Cooper 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 NW¼ of Section 7, T.8N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of said Section 7.¹

II.

Application 34381 was filed on October 25, 1977, by James Randall Cooper 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 SW¼ of Section 7, T.8N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of said Section 7.²

FINDINGS OF FACT

I.

Applications 34380 and 34381 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 #0229 and 0232. 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 James R. and Gloria J. Cooper's Carey Act 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

¹ File No. 34380, official records in the Office of the State Engineer.

² File No. 34381, official records in the office of the State Engineer.

on May 30, 1985. A June 19, 1985, State Lands file memorandum indicates that the Applicants were noticed and accepted the cancellation.^{1,2} The State Engineer finds that the Applicants' Carey Act-Desert Land Entry Application, State Lands #0229 and 0232 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 James R. and Gloria J. Cooper. The BLM data search, indicated that neither James R. Cooper nor Gloria J. Cooper have ever made 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 34380 and 34381 with the Bureau of Land Management, and there is no evidence the Applicants own or control the proposed place 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 34380 and 34381 as the irrigation of 320.00 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 #0229 and 0232, which were cancelled on May 30, 1985, with the Applicants agreement. 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 34380 and 34381 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.

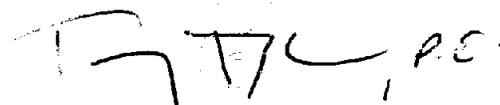
III.

Applications 34380 and 34381 sought to irrigate land that was to be removed from federal jurisdiction by the approval of the Applicants' Carey Act-Desert Land Entry Application, State Lands #0229 and 0232, which were cancelled on May 30, 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 34380 and 34381 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

TT/WHR/jm

Dated this 8th day of

December, 2006.

⁴ NRS § 533.370(5).