

THE OFFICE OF STATE ENGINEER  
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATIONS 32614 )  
AND 32615 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE PUMPERNICKEL )  
VALLEY GROUNDWATER BASIN (065), )  
HUMBOLDT COUNTY, NEVADA. )

RULING

# 4816

GENERAL

I.

Application 32614 was filed on June 30, 1977, by Elmer L. Otto to appropriate 2.7 cubic feet per second (cfs) of underground water for domestic purposes and the irrigation of 160 acres of land described as being located within the NW $\frac{1}{4}$  of Section 21, T.33N., R.40E., 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 said Section 21.<sup>1</sup>

II.

Application 32615 was filed on June 30, 1977, by Jean Otto to appropriate 2.7 cfs of underground water for domestic purposes and the irrigation of 160 acres of land described as being located within the SW $\frac{1}{4}$  of Section 21, T.33N., R.40E., 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 21.<sup>2</sup>

III.

On February 6, 1978, ownership of Applications 32614 and 32615 was transferred to Elmo Otto and Jean Otto in the records of the office of the State Engineer.<sup>1,2</sup>

FINDINGS OF FACT

I.

Applications 32614 and 32615 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'

<sup>1</sup> File No. 32614, official records in the office of the State Engineer.

<sup>2</sup> File No. 32615, official records in the office of the State Engineer.

respective Carey Act Land Entry applications. By letter dated September 8, 1999, the United States Department of the Interior, Bureau of Land Management (BLM) was requested to provide information to the office of the State Engineer relating to the current status of the Elmer L. Otto and Jean Otto Carey Act Land Entry applications.<sup>1,2</sup> A timely response from the BLM was received in the office of the State Engineer which indicated that the BLM had no record of any Carey Act Land Entry applications having been filed in support of Applications 32614 and 32615.<sup>1,2</sup> The State Engineer finds that the applicants have failed to initiate the procedure necessary to remove the land represented by the proposed places of use under the subject applications from federal control, therefore, said land remains under federal jurisdiction.

**II.**

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 32614 and 32615 as the irrigation of two separate 160-acre parcels of land which were to be removed from federal jurisdiction by the approval of the applicants' Carey Act Land Entry applications. The State Engineer finds that the applicants' failure to file the required Carey Act Land Entry applications removes the purposes for which Applications 32614 and 32615 were filed.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</sup>

**II.**

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

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<sup>3</sup> NRS Chapters 533 and 534.

<sup>4</sup> NRS § 533.370(3).

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

**III.**

Applications 32614 and 32615 request appropriations of water for projects that no longer exist. The State Engineer concludes that to approve permits where the need to appropriate water has ceased would threaten to prove detrimental to the public interest.

**RULING**

Applications 32614 and 32615 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MDB/cl

Dated this 7th day of  
December, 1999.