

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

IN THE MATTER OF APPLICATION 38758)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE HIDDEN VALLEY)
HYDROGRAPHIC BASIN (217), CLARK)
COUNTY, NEVADA.)

RULING

5009

GENERAL

I.

Application 38758 was filed on August 8, 1979, by Ernest P. Pagliuso to appropriate 2.7 cubic feet per second of underground water for irrigation purposes within 160 acres of land located within the SE $\frac{1}{4}$ of Section 8, T.16S., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8.¹

FINDINGS OF FACT

I.

Every water right application that is submitted to the office of the State Engineer in its correct and complete form must describe the purpose and the place of use for which the water is to be appropriated. The proposed place of use described under Application 38758 is located upon public land that is administered by the United States Department of the Interior, Bureau of Land Management. Information contained within the remarks section of the application indicates that the applicant intended to gain control of the public lands comprising this place of use through the submittal and approval of a Carey Land Act Entry application. The State Engineer finds that the manner of use requested under Application 38758 is for the irrigation of 160 acres of land that are contained within a place of use that is to be acquired from the federal government through the approval of the applicant's Carey Land Act Land Entry application.

¹ File No. 38758, official records in the office of the State Engineer.

II.

Application 38758 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 Land Entry application.¹ The selection, management and disposal of such land is vested in the Division of State Lands of the Nevada Department of Conservation and Natural Resources.² The State Registrar of Lands is also the custodian of all papers, documents, maps and plats relating to Carey Act lands.³ The records of the office of State Lands that are relevant to the Ernest P. Pagliuso Carey Act Land Entry application reside in the Division of State Lands section of the Nevada State Archives. Information obtained from these records indicates that on August 25, 1977, a Carey Act Land Entry application was filed by Ernest P. Pagliuso in the office of State Lands and was assigned the serial number 1373. This Carey Act application was amended on April 11, 1978, to change the place of use to the SE¼ of Section 8, T.16S., R.63E., .M.D.B.&M.¹ This amendment was acknowledged in a letter dated June 6, 1978, from the Division of State Lands.¹ The filing of a Carey Act Land Entry application necessitates the filing of a corresponding water right application with the office of the State Engineer. The State Engineer finds that water right Application 38758 was filed to appropriate irrigation water for Carey Act Land Entry Application 1373.

III.

NRS chapter 324.130(1) requires that all applications for Carey Act lands which are prepared and submitted in accordance with the regulations of the Division of State Lands and the Department of the Interior must be referred to the State Engineer. The State Engineer shall submit a written report, which includes information regarding the water supply, the status of the water

² NRS § 324.020.

³ NRS § 324.040(2a).

right, and other data necessary to enable the State Registrar of Lands under the Carey Act to make proper application and certification required by the Bureau of Land Management in such cases. Additionally, NRS § 324.130(2) states that no application on which the State Engineer has reported adversely may be approved by the Division of State Lands. By correspondence dated April 16, 1980, the applicant was notified by the Division of State Lands that the 'Report of State Engineer' dated April 9, 1980, constituted an adverse report on Carey Act Application No. 1373. The State Engineer finds that the Carey Act Land Entry application for which water right Application 38758 was filed no longer exists; therefore, the necessity to divert water as proposed under the subject water right application has ceased.

IV.

Application 38758 was filed to irrigate 160 acres of land that were to be transferred to the applicant's control through the approval of his Carey Act Land Entry application.¹ The cancellation of Carey Act Land Entry Application No. 1373 terminated this transfer process with the land remaining under federal control. The State Engineer finds that the applicant does not control the place of use proposed under the subject application.

V.

Applications 32631, 32632, 32633, 32634, 32635, 32636, 32637, 32638, 32639, 32640, 33081, 33082, 33093, 33094, 33095, 33096, 33291, 33313, 33928, and 34029 were all filed for irrigation purposes within Hidden Valley (North). State Engineer's Ruling No. 2563 denied all of the aforementioned mentioned applications on the grounds that there is an inadequate water supply and that the pumping lift would be too prohibitive and would be detrimental to the public welfare.⁴ The State Engineer finds that these

⁴ State Engineer's Ruling No. 2563, dated June 11, 1980, official records in the office of the State Engineer.

applications were filed prior to Application 38758 for irrigation purposes and were denied because there is no water to appropriate, the pumping lift would be too prohibitive and their granting would not be in the public interest.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- 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.

Application 38758 requests an appropriation of water for a project that does not exist. The State Engineer concludes that to approve a permit where the need to appropriate water has ceased would threaten to prove detrimental to the public interest.

IV.

The proposed place of use and point of diversion requested under Application 38758 are described as being within the SE¼ of Section 8, T.16S., R.63E., M.D.B.&M. The most recent surface management map produced by the United States Department of the Interior, Bureau of Land Management depicts the land contained within all of said Section 8 as being public land.⁷ The State Engineer concludes that it would not be in the public interest to

⁵ NRS chapters 533 and 534.

⁶ NRS § 533.370(3).

⁷ United States Dept. of the Interior, Bureau of Land Management 1;100000 Surface Management Map, Overton, Nevada-Utah, 1989.

approve an application for a proposed place of use that the applicant does not control.

v.

Applications 32631, 32632, 32633, 32634, 32635, 32636, 32637, 32638, 32639, 32640, 33081, 33082, 33093, 33094, 33095, 33096, 33291, 33313, 33928, and 34029 were all denied on the grounds that there is no unappropriated water at the proposed source, the pumping lift would be too prohibitive for agricultural purposes and the applications would threaten to prove detrimental to the public interest. The State Engineer concludes that Application 38758, if acted on with the aforementioned applications, would have been denied on the grounds that there is no unappropriated water at the proposed source, the pumping lift would be too prohibitive for agricultural purposes and threatens to be detrimental to the public's interest.

RULING

Application 38758 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.

State Engineer

HR/MDB/hf

Dated this 3rd day of
April, 2001.