

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

IN THE MATTER OF APPLICATIONS 31364)
AND 31365 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE WHITE RIVER)
VALLEY HYDROGRAPHIC BASIN (207),)
WHITE PINE COUNTY, NEVADA.)

RULING

#5022

GENERAL

I.

Application 31364 was filed on April 22, 1977, by the White River Water and Agriculture Development Association to appropriate 6.0 cubic feet per second (cfs) of underground water for irrigation and domestic purposes within the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 21, the SE $\frac{1}{4}$, and the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 20, T.11N., R.62E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 21.¹

II.

Application 31365 was filed on April 22, 1977, by the White River Water and Agriculture Development Association to appropriate 4.0 cfs of underground water for irrigation and domestic purposes within the S $\frac{1}{2}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, T.11N., R.62E., 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 said Section 20.²

III.

Applications 31364 and 31365 were timely protested by Elizabeth L. Baker on the grounds that they would lower or deplete the water source and supply on the ranch used for irrigation and domestic purposes.^{1,2}

¹ File No. 31364, official records in the office of the State Engineer.

² File No. 31365, official records in the office of the State Engineer.

IV.

Application 31364 was timely protested by Virginia A. Gardner on the following grounds:²

To protect two developed natural springs, situated on patented property in the same area.

FINDINGS OF FACT

I.

Applications 31364 and 31365 were 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 applications. By letter dated July 6, 1999, the Nevada Division of State Lands notified the State Engineer that the Carey Act Land Entries associated with Applications 31364 and 31365 had been cancelled.^{1,2} The State Engineer finds that the applicant's attempt to gain control of the places of use described under Applications 31364 and 31365 have been rejected by the proper governing agency.

II.

Applications 31364 and 31365 were filed by the White River Water and Agriculture Development Association. By letter dated April 12, 2000, the Bureau of Land Management informed the office of the State Engineer that entry for the White River Water and Agriculture Development Association under the Desert Land Act would not be granted as the act was intended to apply to individuals.^{1,2}

A water right application is filed to appropriate water for a specific purpose, which in the case of Applications 31364 and 31365 was for the irrigation of land that was to be removed from federal control and transferred to the applicant through the filing and approval of its Carey Act Land Entry applications. The Carey Act Land Entry applications filed by the White River Water and Agriculture Development Association were cancelled by the Nevada Division of State Lands with the ownership of the land

requested for removal retained by the federal government. The State Engineer finds that the purposes for which Applications 31364 and 31365 were filed no longer exist. 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

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 conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

Applications 31364 and 31365 request appropriations of water for projects that do not 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.

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(3).

RULING

Applications 31364 and 31365 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,


HUGH RICCI, P.E.

State Engineer

HR/RAD/d1

Dated this 11th day of
May, 2001.