

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

IN THE MATTER OF APPLICATIONS 42433)
AND 47246 FILED TO APPROPRIATE THE)
PUBLIC WATERS AND APPLICATION 49727)
FILED TO CHANGE THE PLACE OF USE OF)
APPLICATION 47246 WITHIN BIG SMOKY)
VALLEY-NORTHERN PART (137B), NYE)
COUNTY, NEVADA.)

RULING

5198

GENERAL

I.

Application 42433 was filed on September 12, 1980, by Richard L. and Margaret Carver to appropriate 10.8 cubic feet per second (cfs) of water from an underground source for irrigation and domestic purposes on 1,040 acres within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15; W $\frac{1}{2}$ E $\frac{1}{2}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 22; E $\frac{1}{2}$ W $\frac{1}{2}$, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 27; NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, all within T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T.11N., R.43E., M.D.B.&M.¹

II.

Application 47246 was filed on September 16, 1983, by Richard L. and Margaret Carver to appropriate 10.8 cfs of water from an underground source for irrigation and domestic purposes on 640 acres within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15; W $\frac{1}{2}$ E $\frac{1}{2}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 22; E $\frac{1}{2}$ W $\frac{1}{2}$, W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 27, all within T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T.11N., R.43E., M.D.B.&M.²

III.

Application 49727 was filed on February 20, 1986, by Richard L. and/or Margaret A. Carver to change the place of use of 10.8

¹ File No. 42433, official records in the Office of the State Engineer.

² File No. 47246, official records in the Office of the State Engineer.

cfs of the public waters previously applied for under Application 47246. The proposed use is for irrigation and domestic purposes within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15; N $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 22; E $\frac{1}{2}$ W $\frac{1}{2}$, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 27; NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, all within T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T.11N., R.43E., M.D.B.&M.³

FINDINGS OF FACT

I.

Desert Land Application No. N-41330 was filed through the United States Department of the Interior, Bureau of Land Management (BLM), on lands described as being within the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 15, W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 22, and W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 27, all within T.11N., R.43E., M.D.B.&M. By letter dated June 11, 1991, the BLM notified the State Engineer that Desert Land Entry N-41330 had been rejected and closed.¹ The State Engineer finds the legal description of this Desert Land Entry covers a portion of the place of use under Applications 42433 and 49727.

II.

Desert Land Application No. N-41331 was filed through the BLM on lands described as being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, all within T.11N., R.43E., M.D.B.&M. By letter dated January 19, 1990, the BLM notified the State Engineer that Desert Land Entry N-41331 had been rejected and closed.¹ The State Engineer Finds the legal description of this desert Land Entry covers a portion of the place of use under Applications 42433 and 49727.

III.

On January 24, 1990, the State Engineer's Office notified the applicants by mail that this office received notification from the BLM that Desert Land Entry N-41331 had been rejected and requested

³ File no. 49727, official records in the Office of the State Engineer.

from the applicants that the rejected lands be removed from the place of use under Applications 42433 and 49727.¹ The State Engineer finds no response was received for this request.

IV.

The State Engineer finds that on July 25, 1991, Application 42433 was denied by State Engineer's Ruling No. 3816 on the grounds that, the BLM having rejected their desert land entries on those lands, the applicants did not own or control the land to be irrigated.¹

V.

By letter dated August 20, 1991, the applicants requested the State Engineer reconsider Ruling No. 3816 on the basis that some of the land under Application 42433 was private land.¹ The State Engineer finds that on March 16, 1992, State Engineer's Ruling No. 3877 reinstated Application 42433 for that portion of the place of use on private land.

VI.

On October 5, 1992, the State Engineer's Office again notified the applicants by certified mail that this office received notification from the BLM that Desert Land Entry N-41331 had been rejected and requested from the applicants that the rejected lands be removed from the place of use under Application 49727.³

VII.

By letter dated December 30, 1992, the applicants indicated that they were in the process of finding other lands near the ranch that would support another Desert Land Entry. The applicants asked that no action be taken on Application 47246 at that time. The State Engineer finds that almost 10 years have past since the applicants request to withhold action on Application 47246. The State Engineer finds that it is not in the public interest to withhold action indefinitely on Application 47246.

VIII.

On June 25, 1998, the State Engineer sent a certified letter to the applicants requesting an indication of the applicants' intention to continue to pursue Applications 42433, 47246, and 49727. The applicants were advised to withdraw Applications 42433 or 47246, and to withdraw Application 49727. The applicants were also asked for an update of current plans and an update of progress made in the past five years. The applicants were warned that failure to respond within thirty (30) days may result in denial of the applications.

By letter dated July 22, 1998, the applicants indicated that the water quality at the point of diversion was poor. The applicants also indicated that the farming operation would be moved to the south to alleviate the water quality problems and a new Desert Land Entry application would be filed. The applicants requested that no action be taken on Applications 42433, 47246 and 49727 at that time.¹ The State Engineer finds that over 4 years have past since the applicants request to withhold action on Applications 42433, 47246, and 49727. The State Engineer finds that it is not in the public interest to withhold action indefinitely on these applications.

IX.

On June 20, 2002, the State Engineer sent a certified letter to the applicants requesting an indication of the applicants' intention to continue to pursue Applications 42433, 47246, and 49727. The applicants were again advised to withdraw Application 42433 or 47246, and to withdraw Application 49727. The applicants were warned that failure to respond within thirty (30) days would subject the applications to denial. A properly endorsed receipt for the certified mailing to the applicants was received in the Office of the State Engineer on June 27, 2002. The State Engineer finds that the applicants were properly notified of the request for information and failed to respond.

X.

To this date, no response to the State Engineer's latest request for information has been received. The State Engineer finds that the requested information is necessary to safeguard the public interest. The State Engineer finds the applicants have had many years to resolve issues as to these applications and have failed to do so.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:⁵

- 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.

The State Engineer concludes these applicants have had more than enough time to deal with issues as to these applications and have failed to resolve the problems; therefore, the applications can be considered for denial.

IV.

The State Engineer concludes that the applicants have failed to provide evidence of a continued interest in Applications 42433, 47246, and 49727.

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.370(3).

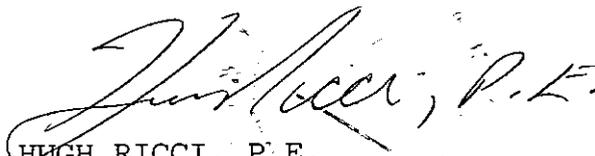
v.

The State Engineer concludes that to withhold action indefinitely on Applications 42433, 47246, and 49727 would threaten to prove detrimental to the public interest.

RULING

Applications 42433, 47246, and 49727 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/BM/jm

Dated this 10th day of
January, 2003.