

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

IN THE MATTER OF APPLICATIONS 32989,)
32990, 32991, 32993, 32995, AND 32996 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
RAILROAD VALLEY - NORTHERN PART)
HYDROGRAPHIC BASIN (173B), NYE)
COUNTY, NEVADA.)

RULING

#5643

GENERAL

I.

Application 32989 was filed on August 1, 1977, by the Nevada Settlers Association, and later assigned to Buck Johnson and Carlin Hofman to appropriate 10.67 cubic feet per second (cfs) of underground water from the Railroad Valley - Northern Part Hydrographic Basin (173B) for irrigation and domestic purposes on 640 acres of land within Section 4, T.10N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 1 of said Section 4.¹

II.

Application 32990 was filed on August 1, 1977, by the Nevada Settlers Association, and later assigned to Buck Johnson and Carlin Hofman to appropriate 10.67 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin (173B) for irrigation and domestic purposes on 640 acres of land within Section 5, T.10N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 1 of said Section 5.²

III.

Application 32991 was filed on August 1, 1977, by the Nevada Settlers Association, and later assigned to Buck Johnson and Carlin Hofman to appropriate 5.4 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin (173B) for irrigation and domestic

¹ File No. 32989, official records in the Office of the State Engineer.

² File No. 32990, official records in the Office of the State Engineer.

purposes on 320 acres of land within the N½ of Section 9, T.10N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of said Section 9.³

IV.

Application 32993 was filed on August 1, 1977, by the Nevada Settlers Association, and later assigned to Buck Johnson and Carlin Hofman to appropriate 10.67 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin (173B) for irrigation and domestic purposes on 640 acres of land within Section 7, T.10N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of said Section 7.⁴

V.

Application 32995 was filed on August 1, 1977, by the Nevada Settlers Association, and later assigned to Buck Johnson and Carlin Hofman to appropriate 8.0 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin (173B) for irrigation and domestic purposes on 480 acres of land within N½ and Lots 1, 2, 3 and 4 of Section 17, T.10N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of said Section 17.⁵

VI.

Application 32996 was filed on August 1, 1977, by the Nevada Settlers Association, and later assigned to Buck Johnson and Carlin Hofman to appropriate 10.67 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin (173B) for irrigation and domestic purposes on 640 acres of land within Section 18, T.10N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of said Section 18.⁶

FINDINGS OF FACT

I.

Applications 32989, 32990, 32991, 32993, 32995, and 32996 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, State Lands Application #1089. In October 2005, the Nevada Division of State Lands was requested to provide information to the

³ File No. 32991, official records in the Office of the State Engineer.

⁴ File No. 32993, official records in the Office of the State Engineer.

⁵ File No. 32995, official records in the Office of the State Engineer.

⁶ File No. 32996, official records in the Office of the State Engineer.

Office of the State Engineer relating to the current status of the Nevada Settlers Association's Carey Act Application. Records received from the Nevada Division of State Lands indicated that the Applicants' Carey Act-Desert Land Entry Application was cancelled on August 31, 1977. The State Engineer finds that the Applicants' Carey Act-Desert Land Entry, State Lands Application #1089 has been terminated by the proper governing agency.^{1,2,3,4,5,6}

II.

On March 17, 1981, the Nevada Division of State Lands filed a Desert Land Entry application with the Bureau of Land Management, (BLM) Case #NVN 032329. The "Remarks" section on the BLM's Serial Register page indicates this filing was on behalf of the Nevada Settlers Association, State Land Application #1089. In August 2005, the BLM was requested by phone to provide information to the Office of the State Engineer relating to the current status of Desert Land Entry Application #NVN 032329. A response from the BLM was received on August 5, 2005, in the Office of the State Engineer, which indicated that the lands requested under water right Applications 32989, 32990, 32991, 32993, 32995, and 32996 were determined unsuitable for Desert Land Entry. This resulted in the rejection/denial of this portion of Desert Land Entry Application #NVN 032329 and the case was ultimately closed by the BLM. The State Engineer finds that the Applicants' attempts to gain control of the places of use described under Applications 32989, 32990, 32991, 32993, 32995, and 32996 has been terminated by the proper governing agency.^{1,2,3,4,5,6}

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 32989, 32990, 32991, 32993, 32995, and 32996 as the irrigation of 3360.00 acres of land, which were to be removed from federal jurisdiction by the approval of the Applicants' Carey Act-Desert Land Entry Application, State Lands Application #1089. The Desert Land Entry application filed by Nevada State, BLM Case #NVN 032329, on behalf of the Nevada Settlers Association was denied for unsuitability with the ownership of the land requested for removal retained by the federal government. The State Engineer finds that the purpose for which Applications 32989, 32990, 32991, 32993, 32995, and 32996 was filed no longer exists; therefore, the necessity to divert water as proposed under the subject water right applications has ceased.

IV.

On February 25, 2005, a Report of Conveyance was filed to transfer ownership of Applications 32989, 32990, 32991, 32993, 32995 and 32996. On April 8, 2005, a confirmation letter was sent indicating that the applications had been assigned to show Buck Johnson and Carlin Hofman as current owners of record. In October 2005, the BLM was requested to provide information to the Office of the State Engineer relating to the existence of any Desert Land Entry applications by or on behalf of Buck Johnson and Carlin Hofman. On October 26, 2005, an email response from the BLM indicated that Buck Johnson and Carlin Hofman had no past or present applications on file, filed by themselves or by the Nevada Division of State Lands, on their behalf.

1,2,3,4,5,6

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁸

- 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.

A water right application is filed to appropriate water for a specific purpose, which in the case of Applications 32989, 32990, 32991, 32993, 32995, and 32996 was the irrigation of 3,360.00 acres of land that were to be transferred from the federal government to the Nevada Settlers Association control through the approval of their Carey Act-Desert Land Entry application. The attempt to transfer ownership of the land described within the places of use under Applications 32989, 32990, 32991, 32993, 32995, and 32996 was terminated when the Desert Land Entry

⁷ NRS chapters 533 and 534.

⁸ NRS § 533.370(5).

application was denied due to the unsuitability of the land. The BLM's closure of the subject Desert Land Entry application removes the purpose for which the water right applications were filed. The State Engineer concludes that to approve water right permits for Carey Act - Desert Land Entry projects that no longer exist and for lands determined unsuitable for irrigation would threaten to prove detrimental to the public interest.

RULING

Applications 32989, 32990, 32991, 32993, 32995, and 32996 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tracy Taylor', with a long horizontal line extending to the right.

TRACY TAYLOR, P.E.
State Engineer

TT/WHR/jm

Dated this 23rd day of

August, 2006.