

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

IN THE MATTER OF APPLICATIONS 32513)
AND 32514 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE GARDEN VALLEY)
HYDROGRAPHIC BASIN (172), NYE COUNTY,)
NEVADA.)

RULING
5690

GENERAL

I.

Application 32513 was filed on June 30, 1977, by Vickie L. Wadsworth to appropriate 2.7 cubic feet per second (cfs) of underground water from the Garden Valley Hydrographic Basin (172) for irrigation and domestic purposes on 160 acres of land within the NE¼ of Section 26, T.4N., R.58E., M.D.B.&M. The proposed point of diversion is described as being located within NW¼ NE¼ of said Section 26. ¹

II.

Application 32514 was filed on June 30, 1977, by Lynn E. Wadsworth to appropriate 2.7 cfs of underground water from the Garden Valley Hydrographic Basin (172) for irrigation and domestic purposes on 160 acres of land within the NW¼ of Section 24, T.4N., R.58E., M.D.B.&M. The proposed point of diversion is described as being located within NW¼ NW¼ of said Section 24. ²

FINDINGS OF FACT

I.

Applications 32513 and 32514 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 Applications #0935 (Vickie L. Wadsworth), and #0852 (Lynn E. Wadsworth), respectively. In October 2005, the Nevada Division of State Lands (State Lands) was requested to provide information to the Office of the State Engineer relating to the current

¹ File No. 32513, official records in the Office of the State Engineer.

² File No. 32514, official records in the Office of the State Engineer.

status of the Applicants' Carey Act Applications. Records received from State Lands indicate that both Applicants' Carey Act-Desert Land Entry Applications were cancelled on February 19, 1985. The State Engineer finds that the Applicants' Carey Act-Desert Land Entry Applications, State Lands #0935 and #0852, were terminated by the proper governing agency.¹

II.

In July 2005, the United States Department of Interior, Bureau of Land Management (BLM) Ely Office was requested to provide information to the Office of the State Engineer relating to the current status of the Applicants' Carey Act-Desert Land Entry Applications. Records received on July 19, 2005, indicate that neither Applicant has a viable/serialized case file with the BLM. The State Engineer finds that the Applicants' have no pending Carey Act-Desert Land Entry Applications on file with the BLM.¹

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 32513 and 32514 as the irrigation of 320.00 acres of land, which were to be removed from federal jurisdiction by the approval of the Applicants' respective Carey Act-Desert Land Entry Applications, State Lands #0935 and #0852. The Carey Act-Desert Land Entry Applications filed by the Applicants were cancelled with the ownership of the land requested for removal retained by the federal government. The State Engineer finds that the purpose for which Applications 32513 and 32514 were filed no longer exists; therefore, the necessity to divert water as proposed under the subject applications has ceased.

IV.

Applications 32513 and 32514 were filed in 1977, over 29 years ago. The State Engineer finds that the Applicants have had an inordinate amount of time to pursue entry via the Carey Act-Desert Land Entry process and any additional delays in the processing of Applications 32513 and 32514 cannot be justified.

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 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.

When reviewing water right applications that are filed in support of Carey Act-Desert Land Entry projects, the State Engineer relies on the state and federal agencies charged with administering such projects to inform him of the Applicants' progress. In this case, State Lands provided information indicating the Applicants' Carey Act-Desert Land Entry Applications were cancelled. The BLM indicated that neither Applicant had a viable/serialized case file with its office.

Over 29 years have passed since Applications 32513 and 32514 were filed and 21 years since State Lands #0935 and #0852 were canceled. There exists an unequal balance between the amount of time that has passed and the Applicants' efforts to obtain entry. It is apparent that the Applicants' Carey Act-Desert Land Entry projects are no longer viable.

The State Engineer concludes that it would threaten to prove detrimental to the public interest to issue any water right permits under these circumstances.

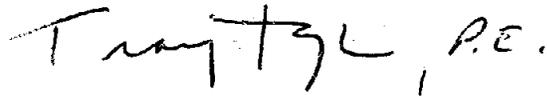
³ NRS chapters 533 and 534.

⁴ NRS § 533.370(5).

RULING

Applications 32513 and 32514 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/WHR/jm

Dated this 7th day of

December, 2006.