

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

IN THE MATTER OF APPLICATIONS 31432 )  
AND 31438 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE RAILROAD VALLEY - )  
NORTHERN PART HYDROGRAPHIC BASIN )  
(173B), NYE COUNTY, NEVADA. )

**RULING**  
**# 5700**

**GENERAL**

**I.**

Application 31432 was filed on May 3, 1977, by Tenabo Gold Mining Co., Inc., later assigned to Rodger Hockersmith d.b.a. Central Nevada Water Co., to appropriate 10.80 cubic feet per second (cfs) of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 640 acres of land within Section 8, T.4N., R.55E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 8, T.4N., R.55E., M.D.B.&M. <sup>1</sup>

**II.**

Application 31438 was filed on May 3, 1977, by Tenabo Gold Mining Co., Inc., later assigned to Rodger Hockersmith d.b.a. Central Nevada Water Co., to appropriate 10.80 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 640 acres of land within Section 23, T.4N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 23, T.4N., R.54E., M.D.B.&M. <sup>2</sup>

**FINDINGS OF FACT**

**I.**

Applications 31432 and 31438 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-Desert Land Entry Application, State Lands #0012. In October 2005, the Office of Nevada

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<sup>1</sup> File No. 31432, official records in the Office of the State Engineer.

<sup>2</sup> File No. 31438, official records in the Office of the State Engineer.

State Lands was visited to collect information for the Office of the State Engineer relating to the current status of this Carey Act Application. Records collected from the Office of Nevada State Lands reveal a number of conflicting documents. The first is that this Carey Act-Desert Land Entry Application, State Lands #0012, was cancelled, by letter dated June 12, 1986, for having no active water right applications on file with the State Engineer's Office. Secondly, an Office of Nevada State Lands Summary of the Carey Act-Desert Land Entry Applications indicates that State Lands Application #0012 was converted to a federal Desert Land Entry, which was found to be not true. Lastly, a March 20, 1986, letter from the BLM to the State Engineer states the Carey Act-Desert Land Entry Application NVN-032339 has been rejected and closed for the Tenabo Gold Mining Co., Inc. The problem here is that the lands identified do not include Section 8, T.4N., R.55E or Section 23, T.4N., R.54E., M.D.B.&M., which are the lands listed under Applications 31432 and 31438.<sup>1,2</sup> Regardless, the State Engineer finds that the applicant's Carey Act-Desert Land Entry Application, State Lands #0012 was terminated by the proper governing agency.

## II.

In November 2005, the United States Department of the Interior, Bureau of Land Management (BLM) - Tonopah Office was visited to collect information for the Office of the State Engineer regarding the current status of the Carey Act-Desert Land Entry Application, State Lands #0012, BLM case file #NVN-032339. The BLM Serial Register pages and the current BLM Plat Map for T.4N., R.55E., M.D.B.&M. were copied. The Serial Register showed that on March 17, 1981, Nevada State made a Desert Land Entry Application on behalf of Tenabo Gold Mining Co., Inc., State Lands #0012, for lands that included Section 8, T.4N., R.55E. (water right Application No. 31432), but did not include Section 23, T.4N., R.54E. (water right Application No.31438), M.D.B.&M. The Serial Register appears to be incomplete, as no classification is given for, Section 8, T.4N., R.55E. However, the BLM Plat Map remarks section shows Section 8, T.4N., R.55E. as unsuitable for Desert Land Entry.<sup>1</sup> The State Engineer finds that the Applicants attempt to gain control of the place of use of lands as described under Application 31432 was terminated by the proper governing agency as unsuitable for Desert Land Entry.

## III.

With regards to Section 23, T.4N., R.54E. (31438), M.D.B.&M., which did not appear in the Serial Register pages for BLM case file #NVN-032339, a range and township search of BLM

records found no record that the Applicant had ever made, nor did anyone on its behalf, an application for a Desert Land Entry through state or federal agencies.<sup>2</sup> The State Engineer finds that Tenabo Gold Mining Co., Inc, or its successors, have made no application to gain control of the place of use of lands as described under Application 31438 through a Carey Act or federal Desert Land Entry.

#### IV.

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 31432 and 31438 as the irrigation of 1,280.00 acres of land, which were to be removed from federal jurisdiction by the approval of the Applicant's Carey Act-Desert Land Entry Applications, State Lands #0012. The case file for this Carey Act-Desert Land Entry application was closed by the Office of Nevada State Lands and no federal Desert Land Entry Applications are pending on behalf of the Applicant with the BLM; therefore, the ownership of the land requested for removal is retained by the federal government.<sup>1,2</sup> The State Engineer finds that the purpose for which Applications 31432 and 31438 were filed no longer exists; 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.<sup>3</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</sup>

- 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.

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<sup>3</sup> NRS chapters 533 and 534.

<sup>4</sup> NRS § 533.370(5).

**III.**

The Office of Nevada State Lands case file #0012 for a Carey Act-Desert Land Entry was closed by the Office of Nevada State Lands and no federal Desert Land Entry applications are pending on behalf of the Applicants; therefore, the necessity to divert water as proposed under Applications 31432 and 31438 has ceased. The State Engineer concludes that to approve water right permits for projects that no longer exist would threaten to prove detrimental to the public interest.

**RULING**

Applications 31432 and 31438 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

HR/WHR/jm

Dated this 8th day of

December, 2006.