

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

IN THE MATTER OF APPLICATIONS)
31575, 31576, AND 31589 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
RAILROAD VALLEY - SOUTHERN PART)
HYDROGRAPHIC BASIN (173A), NYE)
COUNTY, NEVADA.)

RULING

#5803

GENERAL

I.

Application 31575 was filed on May 10, 1977, by Central Nevada Water Co., later assigned to Great Basin Holding Co., to appropriate 5.4 cubic feet per second (cfs) of underground water from the Railroad Valley - Southern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 9, T.1N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of said Section 9.¹

II.

Application 31576 was filed on May 10, 1977, by Central Nevada Water Co., later assigned to Great Basin Holding Co., to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 10, T.1N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of said Section 10.²

¹ File No. 31575, official records in the Office of the State Engineer.

² File No. 31576, official records in the Office of the State Engineer.

III.

Application 31589 was filed on May 10, 1977, by Central Nevada Water Co., later assigned to Great Basin Holding Co., to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern Part Hydrographic Basin for irrigation and domestic purposes on 320 acres of land. The proposed place of use is described as being located within the S½ of Section 8, T.1N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of said Section 8.³

FINDINGS OF FACT

I.

Applications 31575, 31576, and 31589 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 State of Nevada Carey Act Desert Land Entry Application. The Nevada Division of State Lands (State Lands) was contacted and it was determined that the Applicant has only one Carey Act Desert Land Entry Application, #0086. Other than a listing that indicates the Case File #0086 is open and pending, and that the above water rights are applicable; details of the Carey Act application were unavailable because State Lands staff was unable to locate the case file within their office or the state archives. The State Engineer finds that the State Lands case file for the Carey Act Desert Land Entry Application #0086 is pending.

II.

In November 2005 the Bureau of Land Management (BLM)-Tonopah Office was visited by staff personnel from the Office of the State Engineer to determine the status of any Federal Desert Land Entry Applications filed on behalf of or by the Central Nevada Water Company. It was determined that on March 17, 1981, the State of Nevada filed a Federal Desert Land

³ File No. 31589, official records in the Office of the State Engineer.

Entry (DLE) Application on behalf of the Central Nevada Water Company, BLM #NVN 032309. An examination of the Ranges, Townships and Sections in the BLM case file #NVN 032309 revealed two details: a) that half of the place of use applied for under each water right application was not included in the areas specified for the Federal DLE and b) the half that was applied for was determined unsuitable for entry by decision on November 26, 1984. BLM case file #NVN 032309 was rejected/denied in part on June 9, 1984 and closed on July 21, 1997. The State Engineer finds that the Applicant has not gained control of the place of use described under Applications 31575, 31576, and 31589 with the proper governing federal agency.^{1,2,3}

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 31575, 31576, and 31589 as the irrigation of 960 acres of land, which were to be removed from federal jurisdiction by the approval of the State of Nevada Carey Act Desert Land Entry Application #0086. The State of Nevada Federal DLE Application #NVN 032309 with the BLM for the land in the place of use listed under Applications 31575, 31576, and 31589 were either rejected as unsuitable or not applied for, and the ownership of the land requested for removal is retained by the federal government. The State Engineer finds that the purpose for which Applications 31575, 31576, and 31589 were filed does not exist; therefore, the necessity to divert water as proposed under the subject applications does not exist.

IV.

As noted in Finding #1, the State of Nevada Carey Act Desert Land Entry Application #0086 is open and pending. Entry to the place of use listed under Applications 31575, 31576, and 31589 can never be granted to the State of Nevada

by the BLM, since the BLM has either never received a Federal DLE application from the State of Nevada for these particular lands or the lands applied for were rejected as unsuitable; therefore, State Lands will never have the option of granting entry to these lands to the Applicant. The State Engineer finds that the purpose for which Applications 31575, 31576, and 31589 were filed does not exist; therefore, the necessity to divert water as proposed under the subject applications does not exist.

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 an 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 purpose for which Applications 31575, 31576, and 31589 were filed does not exist because the State of Nevada Federal Desert Land Entry application with the BLM either did not include the land or the land was rejected as unsuitable for the place of use described under Applications 31575, 31576, and 31589. The State Engineer concludes that to

⁴ NRS chapters 533 and 534.

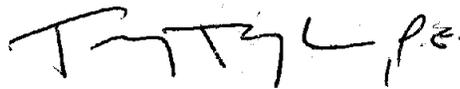
⁵ NRS § 533.370(5).

approve a water right permit for a project that does not exist would threaten to prove detrimental to the public interest.

RULING

Applications 31575, 31576, and 31589 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 14th day of
December, 2007.