

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

IN THE MATTER OF APPLICATION 33815 and)
33816 FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE LITTLE SMOKY VALLEY -)
NORTHERN PART HYDROGRAPHIC BASIN)
(155A), WHITE PINE COUNTY, NEVADA.)

RULING
5589

GENERAL

I.

Application 33815 was filed on September 27, 1977, by Gwendolyn F. Smith, and later assigned to Ronald W. Smith to appropriate 2.7 cubic feet per second (cfs) of underground water from the Little Smoky Valley - Northern Part Hydrographic Basin for the irrigation of 160 acres of land. The proposed place of use is described as being located within the SE $\frac{1}{4}$ of Section 16, T.17N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T.17N., R.54E., M.D.B.&M.¹

II.

Application 33816 was filed on September 27, 1977, by Ronald W. Smith to appropriate 2.7 cfs of underground water from the Little Smoky Valley - Northern Part Hydrographic Basin for the irrigation of 160 acres of land. The proposed place of use is described as being located within the SW $\frac{1}{4}$ of Section 16, T.17N., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T.17N., R.54E., M.D.B.&M.²

FINDINGS OF FACT

I.

The State Engineer finds that an examination of records in the Office of the State Engineer indicates that, through approved Desert Land Entry Applications (DLE), Permits 36712 and 45074 have been certificated for the SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 16, T.17N., R.54E., M.D.B.&M., respectively.

¹ File No. 33815, official records in the Office of the State Engineer.

² File No. 33816, official records in the Office of the State Engineer.

II.

Applications 33815 and 33816 were filed to appropriate water on lands administrated by the U.S.D.I. Bureau of Land Management (BLM) that were to be removed from the federal domain through the approval of the applicant's Carey Act Land Entry Application, BLM Case #NVN 041577. On June 17, 2005, the BLM Ely Office was contacted by telephone to provide information to the Office of the State Engineer relating to the current status of the applicant's Carey Act Land Entry Application. A BLM faxed response, received that same day, indicated that the applicant's Carey Act Land Entry Case had been closed by the BLM on January 7, 1994, because the land had been appropriated by other senior DLE applicants.¹ The State Engineer finds that the applicant's attempt to gain control of the place of use described under Applications 33815 and 33816 has been terminated by the proper governing federal agency.

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 33815 and 33816 as the irrigation of 320 acres of land, which were to be removed from federal jurisdiction by the approval of the applicant's Carey Act Land Entry Application #NVN 041577. The Carey Act Land Entry application filed by the applicant was closed by the BLM with the ownership of the land requested for removal being appropriated by the applicants of Permits 36712 and 45074. The State Engineer finds that the purpose for which Applications 33815 and 33816 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.³

II.

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

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(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.

The State Engineer concludes that approval of a water right permit filed in support of a Carey Act Land Entry Application that has been closed by the BLM would threaten to prove detrimental to the public interest.

RULING

Applications 33815 and 33816 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/WHR/jm

Dated this 14th day of

March, 2006.