

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

IN THE MATTER OF APPLICATIONS 31471 )  
AND 31475 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE HOT CREEK VALLEY )  
HYDROGRAPHIC BASIN (156), NYE COUNTY, )  
NEVADA. )

**RULING**

**#5650**

**GENERAL**

**I.**

Application 31471 was filed on May 4, 1977, by the Hot Creek Irrigation Company, Inc., later assigned to Great Basin Land Co., Inc., to appropriate 10.8 cubic feet per second (cfs) of underground water from the Hot Creek Valley Hydrographic Basin for irrigation purposes on 640 acres of land within Section 1, T.4N., R.50E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 1. <sup>1</sup>

**II.**

Application 31475 was filed on May 4, 1977, by the Hot Creek Irrigation Company, Inc., later assigned to Great Basin Land Co., Inc., to appropriate 10.8 cfs of underground water from the Hot Creek Valley Hydrographic Basin for irrigation purposes on 640 acres of land within Section 13, T.4N., R.50E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 13. <sup>2</sup>

**FINDINGS OF FACT**

**I.**

Applications 31471 and 31475 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 #0032. In October 2005 the Division of Nevada State Lands was requested to provide information to the Office of the State Engineer relating to the current status of the Hot Creek Irrigation Company Carey Act Application. Records received from the Division of Nevada State Lands indicated that the Applicant's Carey Act-Desert Land Entry

---

<sup>1</sup> File No. 31471, official records in the Office of the State Engineer.

<sup>2</sup> File No. 31475, official records in the Office of the State Engineer.

Application #0032 was cancelled on August 14, 1984.<sup>1</sup> The State Engineer finds that the Applicant's Carey Act-Desert Land Entry Application, State Lands #0032 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 review the BLM case file and collect information regarding the current status of the Nevada State Desert Land Entry Application #NVN 031758. The case file revealed that on January 2, 1981, the State of Nevada filed a Federal Desert Land Entry Application with the BLM Case #NVN 031758. The "Remarks" section on the BLM's Serial Register page indicates this filing was on behalf of Hot Creek Irrigation Company, State Land Application #0032. The Serial Register page also indicated that Sections 1 and 13, T.4N., R.50E., M.D.B.&M. were determined to be suitable for Desert Land Entry on September 2, 1984. However, by letter dated April 15, 1986, the BLM responded to an inquiry from the Division of Nevada State Lands, that due to a lawsuit by the National Wildlife Federation further action on BLM Case #NVN 031758 was suspended. Under the Federal Land Policy and Management Act of 1976 (FLPMA), Public Law 94-579, public lands must be retained by the federal government unless a land use planning procedure determines that disposal of a particular parcel will serve the national interest. In the case of BLM #NVN 031758, the planning procedure is given by the October 1997 Tonopah Resource Management Plan and Record of Decision that lists all lands available for disposal through Desert Land Entry in Appendix 14. A review of Appendix 14 shows that the land described, Sections 1 and 13, T.4N., R.50E. M.D.B.&M, under BLM Case # NVN 031758 are not listed for disposal, and therefore must be retained by the federal government.<sup>1</sup> The State Engineer finds that the Applicant's attempt to gain control of the place of use described under Applications 31471 and 31475 is not allowed by the authorized governmental 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 31471 and 31475 as the irrigation of 1,280 acres of land, which were to be removed from federal jurisdiction by the approval of the Applicant's respective Carey Act-Desert Land Entry Application, State Lands #0032. The lands, Sections 1 and 13, T.4N., R.50E. M.D.B.&M, under the Desert

Land Entry application filed by the State of Nevada, BLM Case #NVN 031758, on behalf of Hot Creek Irrigation Company, are not available for Desert Land Entry 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 31471 and 31475 were filed does not exist; therefore, the necessity to divert water as proposed under the subject application 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.

#### 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 31471 and 31475 as the irrigation of 1,280 acres of land, which were to be removed from federal jurisdiction by the approval of the Applicant's respective Carey Act-Desert Land Entry Application, State Lands #0032. The Division of Nevada State Lands cancelled the Applicant's Carey Act-Desert Land Entry Application #0032 on August 14, 1984. The Desert Land Entry application filed by the State of Nevada, BLM Case #NVN 031758, on behalf Hot Creek Irrigation Company, cannot be granted because the land is not available for Desert Land Entry, and the ownership of the lands requested for removal are retained by the federal government. The State Engineer concludes

---

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

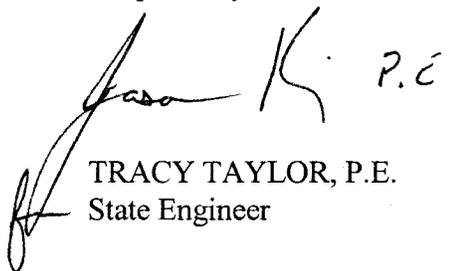
<sup>4</sup> NRS § 533.370(5).

that to approve water right permits for projects where the applicant cannot place the water to beneficial use would threaten to prove detrimental to the public interest.

**RULING**

Applications 31471 and 31475 are hereby denied on the grounds that the approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/WHR/jm

Dated this 25th day of

August, 2006.