

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

IN THE MATTER OF APPLICATIONS 37774)
AND 45365 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE RAILROAD VALLEY -)
NORTHERN PART HYDROGRAPHIC BASIN)
(173B), NYE COUNTY, NEVADA.)

RULING

5686

GENERAL

I.

Application 37774 was filed on April 9, 1979, by Harold A. Stewart to appropriate 6.4 cubic feet per second of underground water from the Railroad Valley - Northern 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 N $\frac{1}{2}$ of Section 23, T.5N., R.55E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 23.¹

II.

Application 45365 was filed on February 22, 1982, by Bruce Stevens to appropriate 3.2 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation purposes on 320 acres of land. The proposed place of use is described as being located within the S $\frac{1}{2}$ of Section 2, T.9N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 2.²

FINDINGS OF FACT

I.

Applications 37774 and 45365 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' federal

¹ File No. 37774, official records in the Office of the State Engineer.

² File No. 45365, official records in the Office of the State Engineer.

Desert Land Entry (DLE) Applications [Note: State of Nevada has no record of either Applicant filing a Carey Act DLE]. In November 2005, the United States Department of the Interior, Bureau of Land Management (BLM), Tonopah Office was visited by staff personnel from the Office of the State Engineer to determine the current status of the Applicants' Desert Land Entry Applications. No records, current or historical, could be located that indicated the Applicants had ever filed for a Desert Land Entry Application with the BLM. The State Engineer finds that the Applicants have failed to properly attempt to gain control of the places of use described under Applications 37774 and 45365 with the proper governing federal agency.^{1,2}

II.

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 37774 and 45365 as the irrigation of 640 acres of land, which were to be removed from federal jurisdiction by the approval of the Applicants' respective Desert Land Entry Applications. No records exist indicating the Applicants made Desert Land Entry applications with the BLM and the ownership of the land requested for removal is still retained by the federal government. The State Engineer finds that the purpose for which Applications 37774 and 45365 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.³

³ NRS chapters 533 and 534.

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.

The purpose for which Applications 37774 and 45365 were filed does not exist because no records exist indicating the Applicants made Desert Land Entry applications with the BLM. The State Engineer concludes that to approve a water right permit for a project that does not exist would threaten to prove detrimental to the public interest.

RULING

Applications 37774 and 45365 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 6th day of

December, 2006.

⁴ NRS § 533.370(5).