

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

IN THE MATTER OF APPLICATIONS 33012 )  
AND 34558 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE GARDEN VALLEY )  
HYDROGRAPHIC BASIN (172), NYE COUNTY, )  
NEVADA. )

**RULING**  
**# 5688**

**GENERAL**

**I.**

Application 33012 was filed on August 3, 1977, by Marlys Jean Wilda to appropriate 2.70 cubic feet per second (cfs) of underground water from the Garden Valley Hydrographic Basin for irrigation and domestic purposes on 160 acres of land within the NW $\frac{1}{4}$  of Section 1, T.2N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 1.<sup>1</sup>

**II.**

Application 34558 was filed on November 3, 1977, by Dennis Anderson to appropriate 2.70 cfs of underground water from the Garden Valley Hydrographic Basin for irrigation and domestic purposes on 160 acres of land within the NE $\frac{1}{4}$  of Section 23, T.4N., R.58E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 23.<sup>2</sup>

**FINDINGS OF FACT**

**I.**

Applications 33012 and 34558 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' Carey Act-Desert Land Entry. In October 2005, the Nevada Division of State Lands was requested to provide information to the Office of the State Engineer relating to the current status of the Applicants' Carey Act Applications. Records received from the Nevada Division of State Lands

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<sup>1</sup> File No. 33012, official records in the Office of the State Engineer.

<sup>2</sup> File No. 34558, official records in the Office of the State Engineer.

indicate that there are no records on file of either Applicant filing a Carey Act-Desert Land Entry Application. The State Engineer finds that there are no records of a Carey Act-Desert Land Entry Application filed in support of the requested appropriations of water under Applications 33012 and 34558.<sup>1,2</sup>

## II.

In July and October 2005 the Bureau of Land Management – Ely Office (BLM) was requested to provide information to the Office of the State Engineer relating to the current status of the any Carey Act-Desert Land Entry or Federal Desert Land Entry Applications by or on behalf of the Applicants. In response, the BLM provided records indicating that neither applicant had a viable/serialized case file with the BLM. The State Engineer finds that the Applicants' have no pending Desert Land Entry Applications on file with the BLM.<sup>1,2</sup>

## 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 33012 and 34558 as the irrigation of 160.00 acres of land each, which were to be removed from federal jurisdiction by the approval of the Applicants' respective Carey Act-Desert Land Entry Applications. A record search by the Office of the State Engineer could not locate any state of Nevada or BLM records where the Applicants made any Desert Land Entry application; therefore, the ownership of the land requested for removal is retained by the federal government. The State Engineer finds that the purpose for which Applications 33012 and 34558 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>

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

<sup>4</sup> NRS § 533.370(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 Applicants filed Applications 33012 and 34558 to support Carey Act-Desert Land Entry projects. However, the Applicants failed to file any Carey Act-Desert Land Entry applications with the appropriate state and federal agencies. As a result, the land requested for irrigation remains under federal jurisdiction and the Applicants do not own or control the proposed places of use. The State Engineer concludes that approval of water right applications under these circumstances would threaten to prove detrimental to the public interest.

**RULING**

Applications 33012 and 34558 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 7th day of

December, 2006.