

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

IN THE MATTER OF APPLICATIONS 32588)
AND 32589 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE RAILROAD VALLEY -)
NORTHERN PART HYDROGRAPHIC BASIN)
(173B), NYE COUNTY, NEVADA.)

RULING
5696

GENERAL

I.

Application 32588 was filed on June 30, 1977, by Jane Anne Whitely to appropriate 2.70 cubic feet per second (cfs) of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 160 acres of land within the NE $\frac{1}{4}$ of Section 1, T.8N., R.55E., 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 Section 1, T.8N., R.55E., M.D.B.&M.¹

II.

Application 32589 was filed on June 30, 1977, by Robert Michael Trudeau to appropriate 2.70 cfs of underground water from the Railroad Valley - Northern Part Hydrographic Basin for irrigation and domestic purposes on 160 acres of land within the SE $\frac{1}{4}$ of Section 1, T.8N., R.55E., 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 1, T.8N., R.55E., M.D.B.&M.²

FINDINGS OF FACT

I.

Applications 32588 and 32589 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 Application, State Lands #0804 and 0901, respectively. In October 2005, the Office of Nevada State Lands was visited to collect information for the Office of the State Engineer relating to the current status of these Carey

¹ File No. 32588, official records in the Office of the State Engineer.

² File No. 32589, official records in the Office of the State Engineer.

Act Applications. Records received from the Office of Nevada State Lands indicated that these Carey Act-Desert Land Entry Applications for the Railroad Valley - Northern Part Hydrographic Basin had been cancelled; State Lands #0804 on May 30, 1985, and # 0901 on May 29, 1985. The cancellation letter from State Lands dated May 30, 1985, Application #0804 included a copy of the United States Department of the Interior, Bureau of Land Management's (BLM) classification decision, which found the lands applied for unsuitable for Desert Land Entry.^{1,2} The State Engineer finds that the Applicants' Carey Act-Desert Land Entry Applications, State Lands #0804 and 0901 that correspond to Applications 32588 and 32589 were terminated by the proper governing agency.

II.

In November 2005, the BLM - Tonopah Office was visited to collect information for the Office of the State Engineer regarding the current status of the Carey Act-Desert Land Entry Application, State Lands #0804. The BLM provided a copy of the current BLM Plat Map that lists the NE¼ Section 1, T.8N., R.55E., M.D.B.&M as unsuitable for Desert Land Entry. In addition, a copy of the Serial Register page for BLM Case File #NVN 32325 for NV State, filed on behalf of Jane Anne Whitely, revealed this case was determined unsuitable and rejected on August 2, 1984, and was closed on December 10, 1984.¹ The State Engineer finds that the Applicant's attempt to gain control of the place of use of lands as described under Application 32588 was terminated by the proper governing agency.

III.

In November 2005, the BLM - Tonopah Office was requested to provide information to the Office of the State Engineer regarding the current status of the Carey Act-Desert Land Entry Application, State Lands #0901. A case file search of BLM records found that the Applicant had never, nor anyone on his behalf, made an application for a federal Desert Land Entry.² The State Engineer finds that the Applicant has made no additional attempts to gain control of the place of use of lands as described under Application 32589 with the Bureau of Land Management.

IV.

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

32588 and 32589 as the irrigation of 320.00 acres of land, which were to be removed from federal jurisdiction by the approval of the Applicants' respective Carey Act-Desert Land Entry Applications, State Lands #0804 and #0901. The case files for these Carey Act-Desert Land Entry applications were closed by the Office of Nevada State Lands and no federal Desert Land Entry Applications are pending on behalf of the Applicants with the BLM; therefore, the ownership of the land requested for removal is retained by the federal government.^{1,2} The State Engineer finds that the purpose for which Applications 32588 and 32589 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

- 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 Office of State Lands case files #0804 and #0901 for Carey Act-Desert Land Entry were closed by the Office of Nevada State Lands and no federal Desert Land Entry applications are pending on behalf of the Applicants; therefore the necessity to divert water as proposed under Applications 32588 and 32589 has ceased. The State Engineer concludes that to approve water right permits for projects that no longer exist would threaten to prove detrimental to the public interest.

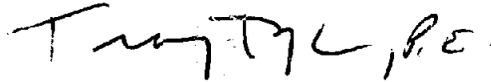
³ NRS chapters 533 and 534.

⁴ NRS § 533.370(5).

RULING

Applications 32588 and 32589 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

HR/WHR/jm

Dated this 8th day of

December, 2006.