

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

IN THE MATTER OF APPLICATION 33110)
FILED TO APPROPRIATE PUBLIC WATERS)
FROM AN UNDERGROUND SOURCE WITHIN)
THE RAILROAD VALLEY HYDROGRAPHIC)
BASIN-NORTHERN PART (173B), NYE)
COUNTY, NEVADA.)

RULING

#5773

GENERAL

I.

Application 33110 was filed on August 10, 1977, by Richard A. Makley to appropriate 2.7 cubic feet per second of water from an underground source within the Railroad Valley Hydrographic Basin – Northern Part for irrigation and domestic purposes on 160.0 acres of land within the S½ S½ of Section 36, T.10N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within SE¼ SE¼ of said Section 36.¹

FINDINGS OF FACT

I.

Application 33110 was 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 Application # 1107. In September 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 Richard A. Makley's Carey-Desert Land Entry Act Application. Records received from the Nevada Division of State Lands indicated that the Applicant's Carey Act-Desert Land Entry Application was cancelled on December 30, 1998. The State Engineer finds that the Applicant's Carey Act-Desert Land Entry, State Lands Application # 1107 has been terminated by the proper governing agency.¹

II.

In December 2005, the United States Department of the Interior, Bureau of Land Management (BLM), Tonopah Office was requested to provide information to the Office of the State Engineer relating to the current status of any Desert Land Entry Application filed by or on

¹ File No. 33110, official records in the Office of the State Engineer.

behalf of Richard A. Makley. Serial Register documents received indicated that on June 20, 1985, a Federal Desert Land Entry application was filed with the Bureau of Land Management, BLM Case # NVN 042360. The Remarks section of the Serial Register indicates that the application was filed on behalf of Richard A. Makley. The Serial Register also showed that the case file is still pending and has not yet been classified as suitable or unsuitable. Further inquiries with BLM staff regarding the delay in classification revealed that the lands requested under the Desert Land Entry, BLM Case # NVN 042360, could not be granted to the Applicant even if classified as suitable. 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 Case #NVN 042360, the planning procedure is given by the October 1997 Tonopah Resource Management Plan and Record of Decision, which lists all lands available for disposal through Desert Land Entry in Appendix 14. A review of Appendix 14 shows that the land described under BLM Case # NVN 042360 is not listed for disposal; therefore, it must be retained by the federal government. The State Engineer finds that the Applicant's attempt to gain control of the place of use described under Application 33110 is not possible by the authorized governmental agency.¹

III.

A review of the File No. 33110 reveals no correspondence from the Applicant in the 29 years since the original filing of the application. The State Engineer finds that to grant a permit to an applicant that has shown no interest in the status of their application would be detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³

² NRS chapters 533 and 534.

³ 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.

Application 33110 was filed to appropriate underground water from lands administrated by the BLM through the approval of the Applicant's Carey Act-Desert Land Entry, State Lands Application # 1107. In 1998, the Nevada Division of State Lands cancelled the Applicant's Carey Act-Desert Land Entry Application. The BLM has not classified the land requested under Application 33110 because the lands are not currently available for Desert Land Entry. The Office of the State Engineer has had no contact from the Applicant in the 29 years this application has been pending. The State Engineer concludes that to grant a permit under these circumstances would threaten to prove detrimental to the public interest.

RULING

Application 33110 is hereby denied on the grounds that its approval threatens to prove detrimental to the public interest.

Respectfully submitted,


TRACY TAYLOR, P.E.
State Engineer

TT/WHR/jm

Dated this 5th day of
September, 2007.