

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

IN THE MATTER OF APPLICATIONS)
31567, 31577, 31592, AND 31593)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE RAILROAD VALLEY -)
SOUTHERN PART HYDROGRAPHIC BASIN)
(173A), NYE COUNTY, NEVADA.)

RULING

#5784

GENERAL

I.

Application 31567 was filed on May 10, 1977, by Central Nevada Water Company, later assigned to Great Basin Holding Co., to appropriate 5.4 cubic feet per second (cfs) of underground water from the Railroad Valley - Southern 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 S½ of Section 18, T.2N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of said Section 18.¹

II.

Application 31577 was filed on May 10, 1977, by Central Nevada Water Company to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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 N½ of Section 18, T.2N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NW¼ of said Section 18.²

III.

Application 31592 was filed on May 10, 1977, by Central Nevada Water Company, later assigned to Great Basin Holding Co.,

¹ File No. 31567, official records in the Office of the State Engineer.

² File No. 31577, official records in the Office of the State Engineer.

to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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 N½ of Section 20, T.2N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NW¼ of said Section 20.³

IV.

Application 31593 was filed on May 10, 1977, by Central Nevada Water Company, later assigned to Great Basin Holding Co., to appropriate 5.4 cfs of underground water from the Railroad Valley - Southern 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 S½ of Section 20, T.2N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of said Section 20.⁴

FINDINGS OF FACT

I.

Applications 31567, 31577, 31592, and 31593 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. The Nevada Division of State Lands (State Lands) was contacted and it was determined that the Applicant has only one (1) Carey Act/Desert Land Entry Application, #0086. The only information available from State Lands is a listing that indicates Case File #0086 is open and pending, and that the above water rights are applicable. Details of Case File #0086 were unavailable because the actual case file could not be located within the State Lands office or the state archives. The State Engineer finds that the State Lands case file for the Carey Act/Desert Land Entry Application #0086 is pending.

³ File No. 31592, official records in the Office of the State Engineer.

⁴ File No. 31593, official records in the Office of the State Engineer.

II.

In November 2005, the Bureau of Land Management (BLM)-Tonopah Office was visited by staff personnel from the Office of the State Engineer to determine the status of any Federal Desert Land Entry Applications on behalf of or by the Applicants. It was determined that on March 17, 1981, the State of Nevada filed a Federal Desert Land Entry (DLE) Application on behalf of the Central Nevada Water Company, BLM #NVN 032309. An examination of the Ranges, Townships and Sections in the BLM case file revealed that none of the areas applied for include the place of use applied for under Applications 31567, 31577, 31592, and 31593. BLM #NVN 032309 was rejected/denied in part on June 9, 1984, and closed on July 21, 1997. The State Engineer finds that there is no Federal DLE Application for control of the place of use described under Applications 31567, 31577, 31592, and 31593 with the proper governing federal agency.^{1,2,3,4}

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 31567, 31577, 31592, and 31593 as the irrigation of 1,280 acres of land, which were to be removed from federal jurisdiction by the approval of the State of Nevada Carey Act/Desert Land Entry Application #0086. No record exists indicating that the State of Nevada or the Applicant has ever made a Federal DLE Application with the BLM for the place of use listed under Applications 31567, 31577, 31592, and 31593 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 31567, 31577, 31592, and 31593 were filed does not exist; therefore, the necessity to divert water as proposed under the subject applications does not exist.

IV.

As noted in Finding I., the State of Nevada Carey/Act Desert Land Entry Application #0086 is open and pending. Entry to the place of use listed under Applications 31567, 31577, 31592, and 31593 can never be granted to the State of Nevada by the BLM, since the BLM has never received a Federal DLE application from the State of Nevada for these particular lands; therefore, the State of Nevada, through the Division of State Lands, will never have the option of granting entry to these lands to the Applicant. The State Engineer finds that the purpose for which Applications 31567, 31577, 31592, and 31593 were filed does not exist; therefore, the necessity to divert water as proposed under the subject applications does not exist.

V.

These applications have been pending for over 30 years without resolution or right of entry to the lands being granted. In October 2005, the Office of the State Engineer wrote Great Basin Holding Company a letter to obtain information as to the status of the Applicant's project. By letter dated October 22, 2005,⁵ the Applicant informed the State Engineer that since the Bureau of Land Management has declined to pursue on lands scheduled for disposal, that it was taking steps toward gaining ownership of the Federal lands. The Applicant indicated it was informed by the Bureau of Land Management in July 2004 that neither staffing nor adequate budget resources were available to administer sale processes.

The State Engineer finds 30 years is adequate time to provide the Applicants the ability to attempt to gain entry to the places of use under these applications. Nevada Revised Statute 533.370(2) provides the State Engineer should act on applications within one year. The State Engineer finds another two years has passed without the Applicant gaining access to the proposed places

⁵ See, File No. 31439, official records in the Office of the State Engineer.

of use. The State Engineer finds it is time for resolution of these applications.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁶

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁷

- 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 31567, 31577, 31592, and 31593 were filed does not exist because no record exists indicating the State of Nevada or the Applicant ever made a Federal DLE application with the BLM for the place of use described under Applications 31567, 31577, 31592, and 31593. 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.

IV.

The State Engineer concludes that to approve a water right permit for a project that requires entry to federal lands, and where the Applicants have failed to gain entry to the land through the Carey Act/Desert Land Entry process for over thirty years, would threaten to prove detrimental to the public interest.

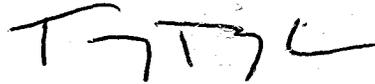
⁶ NRS chapters 533 and 534.

⁷ NRS § 533.370(5).

RULING

Applications 31567, 31577, 31592, and 31593 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 2nd day of

October, 2007.