

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

IN THE MATTER OF APPLICATION 32988)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE RAILROAD VALLEY)
(NORTHERN PART) HYDROGRAPHIC)
BASIN (173B), NYE COUNTY, NEVADA.)

RULING
#6198

GENERAL

I.

Application 32988 was filed on August 1, 1977, by the Nevada Settlers Assn. to appropriate 10.67 cubic feet per second of water from an underground source for irrigation and domestic purposes. Information contained in the file indicates that the application was filed in support of a Carey Act application. The proposed place of use is described as being all of Section 3, T.10N., R.57E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 1 of said Section 3.¹

FINDINGS OF FACT

I.

A review of mapping records show that the place of use described in the application is public land managed by the United States Department of the Interior, Bureau of Land Management (BLM).² Application 32988 was filed over 35 years ago in an effort to obtain entry to federally controlled public lands under the Carey Act. By letter of September 6, 2006, State Lands informed the Applicant that it should update the Settler Applications that are on file and create a Plan of Development. The State Engineer finds that there is no information contained in File No. 32988 indicating the applicant updated the information with State Lands or has yet to obtain entry to the proposed place of use.

¹ File No. 32988, official records in the Office of the State Engineer.

² United States Bureau of Land Management, "Duckwater", 1:100,000-scale topographic map, Land Records Version 4.12, <<http://www.nv.blm.gov/LandRecords/map.php?town=0100N&range=0570E>>.

The State Engineer finds the Applicant does not own or control the land described under the place of use of Application 32988. The State Engineer finds that the Applicant has had over 35 years to obtain entry to the lands and has failed to do so.

II.

Application 32988 was filed to appropriate groundwater from the Railroad Valley Hydrographic Basin – Northern Part over 35 years ago. When applications to appropriate groundwater are filed they are generally considered in the order that they are filed, because the filing date sets the priority of the water right if it is approved. An abstract of the basin shows that Application 32988 is blocking the Office of the State Engineer from taking action on 42 applications that were filed later in time.³ The State Engineer finds that to continue to withhold action would be detrimental to the interests of the applicants that filed later in time. The State Engineer finds that an inordinate amount of time has passed for the Applicant to resolve any outstanding issues regarding entry to the lands and delaying any further action on these applications would threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

Nevada Revised Statute § 533.030 provides water may be appropriated for beneficial use and not otherwise. Nevada Revised Statute § 533.035 provides that beneficial use shall be the basis, the measure and the limit of the right to the use of water. The State Engineer concludes that the Applicant cannot place the applied for water to beneficial use.

³ Nevada Division of Water Resources' Water Rights Database, Hydrographic Basin Summary, Railroad Valley-Northern Part Hydrographic Basin (173B), August 30, 2012, official records in the Office of the State Engineer.

⁴ NRS Chapters 533 and 534.

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where: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 protectable 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.

IV.

The State Engineer concludes that the Applicant does not own or control the lands described under Application 32988. The State Engineer further concludes that to grant an application to appropriate the public waters where the applicant does not own or control the lands would not be in the public interest.

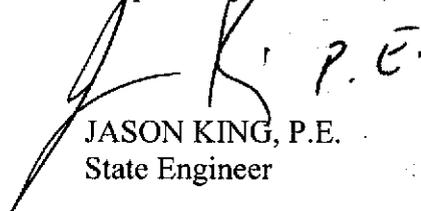
V.

The Applicant has had over 35 years to gain entry to the public lands and has failed. The State Engineer concludes that no permits can be issued under these circumstances and to delay action any longer would threaten to prove detrimental to the public interest.

RULING

Application 32988 is hereby denied on the grounds that the Applicant cannot place the water to beneficial use and its issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 10th day of
October, 2012.

⁵ NRS § 533.370(2).