

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

IN THE MATTER OF APPLICATIONS)
33141, 33142, 33148 AND 33151 FILED TO)
APPROPRIATE THE UNDERGROUND)
WATER AND APPLICATIONS 77216,)
77218, 77219 AND 77244 FILED TO)
CHANGE THE POINT OF DIVERSION)
AND PLACE OF USE OF THIS WATER)
APPLIED FOR WITHIN THE SNAKE)
VALLEY HYDROGRAPHIC BASIN (195),)
WHITE PINE COUNTY, NEVADA.)

RULING

#6252

GENERAL

I.

Application 33141 was filed on August 15, 1977, by Mickey Tognoni, later assigned to Granite Peak Properties, LLC, to appropriate 2.7 cubic feet per second (cfs) of groundwater from the Snake Valley Hydrographic Basin for irrigation and domestic purposes. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 35, T.10N., R.70E., M.D.B.&M. The proposed place of use is described as being located within the SE¼ of Section 35, T.10N., R.70E., M.D.B.&M. Information in the application file indicates that the Applicant was trying to obtain a right of access to the land proposed to be irrigated pursuant to a Carey Act application.¹

II.

Application 33142 was filed on August 15, 1977, by Marjorie Tognoni, later assigned to Granite Peak Properties, LLC, to appropriate 2.7 cfs of groundwater from the Snake Valley Hydrographic Basin for irrigation and domestic purposes. The proposed point of diversion is described as being located within the SW¼ SW¼ of Section 36, T.10N., R.70E., M.D.B.&M. The proposed place of use is described as being located within the SW¼ of Section 36, T.10N., R.70E., M.D.B.&M. Information in the application file indicates that the Applicant was trying to obtain a right of access to the land proposed to be irrigated pursuant to a Carey Act application.²

¹ File No. 33141, official records in the Office of the State Engineer.

² File No. 33142, official records in the Office of the State Engineer.

III.

Application 33148 was filed on August 15, 1977, by Frederick J. Anderson, later assigned to Granite Peak Properties, LLC, to appropriate 2.7 cfs of groundwater from the Snake Valley Hydrographic Basin for irrigation and domestic purposes. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T.10N., R.70E., M.D.B.&M. The proposed place of use is described as being located within the NE $\frac{1}{4}$ of Section 23, T.10N., R.70E., M.D.B.&M. Information in the application file indicates that the Applicant was trying to obtain a right of access to the land proposed to be irrigated pursuant to a Carey Act application.³

IV.

Application 33151 was filed on August 15, 1977, by Ruth W. Anderson, later assigned to Granite Peak Properties, LLC, to appropriate 2.7 cfs of groundwater from the Snake Valley Hydrographic Basin for irrigation and domestic purposes. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T.10N., R.70E., M.D.B.&M. The proposed place of use is described as being located within the SW $\frac{1}{4}$ of Section 13, T.10N., R.70E., M.D.B.&M. Information in the application file indicates that the Applicant was trying to obtain a right of access to the land proposed to be irrigated pursuant to a Carey Act application.⁴

V.

Application 77216 was filed on July 7, 2008, by Granite Peak Properties, LLC, to change the point of diversion and place of use of 2.7 cfs of the groundwater previously applied for under Application 33141. The proposed point of diversion is described as being located within Lot 4 of Section 13, T.10N., R.70E., M.D.B.&M. The proposed place of use is described as being located within Lots 1, 2, 8-13, 17-20 of Section 12, Lots 1-9, 12-19 of Section 13, Lots 2-8, 13-16, SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, Lots 4-7, 15, 16, SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, all in T.10N., R.70E., M.D.B.&M. The remarks section of the application indicates that the request is to move the water applied for under Application 33141 to land owned by Granite Peak Properties, LLC.⁵

VI.

Application 77218 was filed on July 9, 2008, by Granite Peak Properties, LLC, to change the point of diversion and place of use of 2.7 cfs of the groundwater previously applied for under

³ File No. 33148, official records in the Office of the State Engineer.

⁴ File No. 33151, official records in the Office of the State Engineer.

⁵ File No. 77216, official records in the Office of the State Engineer.

Application 33151. The proposed point of diversion is described as being located within Lot 2 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is described as being located within Lots 1, 2, 8-13, 17-20 of Section 12, Lots 1-9, 12-19 of Section 13, Lots 2-8, 13-16, SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, Lots 4-7, 15, 16, SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, all in T.10N., R.70E., M.D.B.&M. The remarks section of the application indicates that the request is to move the water applied for under Application 33151 to land owned by Granite Peak Properties, LLC.⁶

VII.

Application 77219 was filed on July 9, 2008, by Granite Peak Properties, LLC, to change the point of diversion and place of use of 2.7 cfs of the groundwater previously applied for under Application 33148. The proposed point diversion is described as being located within Lot 7 of Section 25, T.10N., R.70E., M.D.B.&M. The proposed place of use is described as being located within Lots 1, 2, 8-13, 17-20 of Section 12, Lots 1-9, 12-19 of Section 13, Lots 2-8, 13-16, SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, Lots 4-7, 15, 16, SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, all in T.10N., R.70E., M.D.B.&M. The remarks section of the application indicates that the request is to move the water applied for under Application 33148 to land owned by Granite Peak Properties, LLC.⁷

VIII.

Application 77244 was filed on July 23, 2008, by Granite Peak Properties, LC, [sic] to change the point of diversion and place of use of 2.7 cfs of the groundwater previously applied for under Application 33142. The proposed point diversion is described as being located within Lot 8 of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is described as being located within Lots 1, 2, 8-13, 17-20 of Section 12, Lots 1-9, 12-19 of Section 13, Lots 2-8, 13-16, SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, Lots 4-7, 15, 16, SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, all in T.10N., R.70E., M.D.B.&M. The remarks section of the application indicates that the request is to move the water applied for under Application 33142 to land owned by Granite Peak Properties, LLC.⁸

IX.

Applications 77216, 77218, 77219 and 77244 were timely protested by Second Big Springs Irrigation Company and Baker Ranches, Inc. on various grounds summarized as follows:

⁶ File No. 77218, official records in the Office of the State Engineer.

⁷ File No. 77219, official records in the Office of the State Engineer.

⁸ File No. 77244, official records in the Office of the State Engineer.

1. The proposed use of the water will conflict with and impair existing rights in Snake Valley, including but not limited to those owned by Second Big Springs Irrigation Company and its shareholders.
2. The applications should be denied because the Applicant has forfeited or abandoned the water rights associated with the original applications.
3. For over thirty years since the filing of the original applications the Applicant and its predecessors have failed to perfect any Desert Land Entries that served as the basis for and proposed beneficial use for the water sought under the change application.
4. It appears that the purported beneficial use is used merely as a pretext designed to allow the Applicant to more effectively bundle water rights for speculative sale to a would-be interbasin transferee.
5. The proposed points of diversion are hydrologically connected to Needle Point Spring and current pumping is already resulting in a groundwater level decline that the spring has stopped flowing. Thus, additional appropriations of groundwater will result in further groundwater level declines resulting in environmental impacts that are detrimental to the public interest.
6. The portion of Snake Valley from which the applications propose to divert water is already over-appropriated.

FINDINGS OF FACT

I.

Applications 33141, 33142, 33148 and 33151 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 State of Nevada Carey Act/Desert Land Entry applications. In 1986, the Nevada Division of State Lands informed the previous holders of the applications that the United States Department of Interior, Bureau of Land Management had suspended any further action on virtually all Carey Act applications.⁹ Since the filing of the applications in 1977, the only information provided by any of the holders of the water right applications is that the Carey Act applications remain pending. 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 these applications as the irrigation of 160 acres of land under each application. In 2013,

⁹ Letter dated July 3, and 25, 1986, File Nos. 33141, 33142, 33148 and 33151, official records in the Office of the State Engineer.

the Applicant was again informed that the State of Nevada placed a hold on Carey Act applications pending action by the U.S. Bureau of Land Management. By letter dated December 31, 2013, the Applicant indicated that the U.S. Bureau of Land Management is not making Carey Act applications a priority. The State Engineer finds that for more than 36 years, these water right applications have been pending, the water right applicant has not been able to obtain access to the land proposed to be irrigated, and therefore cannot place the water to beneficial use. The State Engineer finds that the purpose for which said applications were filed does not exist; therefore, the necessity to divert water as proposed under the applications does not exist and that it is not in the public interest to approve applications where the Applicant cannot place the water to beneficial use as proposed under the applications.

II.

Nevada water law demonstrates an expectation that the State Engineer is to act on water right applications in a timely manner. At the time these applications were filed, Nevada Revised Statute § 533.370(3) provided that the State Engineer shall either approve or reject each application within one year from the final date for filing a protest; however, action could be postponed upon written authorization by the applicant. Nevada Revised Statute § 533.030 provides that water may be appropriated for beneficial use and not otherwise and NRS § 533.035 provides that beneficial use is the basis, the measure and the limit of the right to use water. The State Engineer finds that neither the Applicant nor its predecessors have been able to demonstrate the ability to place the water to beneficial use. The State Engineer finds the Applicant and its predecessors have been provided more than adequate time to demonstrate access to the land proposed to be irrigated and they have been unable to do so. The State Engineer finds other applicants are waiting in line in this hydrographic basin for action on applications. The State Engineer finds to allow these applications to indefinitely withhold action on other pending applications is not in the public interest.

III.

Applications 77216, 77218, 77219 and 77244 were filed to change the point of diversion and place of use of the water requested for appropriation under Applications 33141, 33142, 33148 and 33151. The State Engineer has already found that the purpose for which these applications were filed does not exist; therefore, the necessity to divert water as proposed under the applications does not exist and that it is not in the public interest to approve the applications because the Applicant does not control the proposed places of use and the Applicant cannot place the water to beneficial use as proposed under the applications. Nevada Revised Statute § 533.345

provides that a change application may be filed for water already appropriated. Nevada Revised Statute § 533.324 provides that water already appropriated includes water for which the State Engineer has issued a permit. The State Engineer finds that since Applications 33141, 33142, 33148 and 33151 cannot be permitted, they cannot be considered as water already appropriated in order to support the changes proposed under Applications 77216, 77219, 77219 and 77244.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁰

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:¹¹

- 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.

III.

The State Engineer concludes that the purpose for which the applications were filed does not exist because the Carey Act/Desert Land Entry applications have never been granted. The State Engineer concludes that the Applicant cannot demonstrate the ability to place the water to beneficial use as applied for under the applications. The State Engineer concludes that to approve a water right permit for a project that does not exist as applied for and has not existed for more than 36 years would threaten to prove detrimental to the public interest.

IV.

Applications 77216, 77219, 77219 and 77244 proposed to change the point of diversion and place of use of the water applied for under Applications 33141, 33142, 33148 and 33151. Applications 33141, 33142, 33148 and 33151 are being denied because the Applicant cannot demonstrate the ability to place the water to beneficial use as applied for under those applications. Since Applications 33141, 33142, 33148 and 33151 are being denied in this ruling,

¹⁰ NRS Chapter 533 and 534.

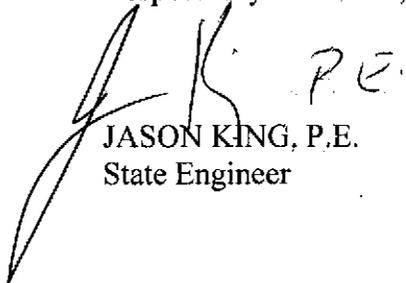
¹¹ NRS § 533.370(2).

there are no existing water rights that can be changed under Applications 77216, 77219, 77219 and 77244. Nevada Revised Statute § 533.325 provides that an application can be filed to change the place of diversion, manner or place of use of water already appropriated. Nevada Revised Statute § 533.324 defines water already appropriated as water represented by a permit or certificate in good standing. The State Engineer concludes that since the water rights that change Applications 77216, 77219, 77219 and 77244 seek to change are being denied there are no water rights in good standing that can be used to support the change applications; therefore, Applications 77216, 77218, 77219 and 77244 are subject to denial.

RULING

Applications 33141, 33142, 33148 and 33151 are hereby denied on the grounds that the Applicant is unable to demonstrate the ability to place the water to beneficial use; therefore, approval of the applications would threaten to prove detrimental to the public interest. Applications 77216, 77219, 77219 and 77244 are hereby denied on the grounds that there are no water rights in good standing that can be used to support the change applications.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 24th day of
January , 2014 .