

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

IN THE MATTER OF APPLICATIONS )  
33143, 33146 AND 33149 FILED TO )  
APPROPRIATE THE UNDERGROUND )  
WATER WITHIN THE SNAKE VALLEY )  
HYDROGRAPHIC BASIN (195), WHITE )  
PINE COUNTY, NEVADA. )

**RULING**

**#6253**

**GENERAL**

**I.**

Application 33143 was filed on August 15, 1977, by Neva F. Bida, later assigned to Taylor Jenkins, 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 SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 35, 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 35, T.10N., R.70E., M.D.B.&M.<sup>1</sup> 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.

**II.**

Application 33146 was filed on August 15, 1977, by Sam Bida, later assigned to Wayne Jenkins, 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 $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 36, T.10N., R.70E., M.D.B.&M. The proposed place of use is described as being located within the NW $\frac{1}{4}$  of Section 36, T.10N., R.70E., M.D.B.&M.<sup>2</sup> 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.

**III.**

Application 33149 was filed on August 15, 1977, by Fred E. Anderson, later assigned to Elar Jenkins, to appropriate 2.7 cfs of groundwater from the Snake Valley Hydrographic Basin

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<sup>1</sup> File No. 33143, official records in the Office of the State Engineer.

<sup>2</sup> File No. 33146, official records in the Office of the State Engineer.

for irrigation and domestic purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 24, T.10N., R.70E., M.D.B.&M. The proposed place of use is described as being located within the N $\frac{1}{2}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 24, and SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 13, T.10N., R.70E., M.D.B.&M.<sup>3</sup> 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.

### **FINDINGS OF FACT**

#### **I.**

Applications 33143, 33146 and 33149 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' 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.<sup>4</sup> 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. The State Engineer is aware that in 2013, the State of Nevada indicated that it continues to place a hold on Carey Act applications pending action by the U.S. Bureau of Land Management and 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 applicants have 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 Applicants cannot place the water to beneficial use as proposed under the applications.

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<sup>3</sup> File No. 33149, official records in the Office of the State Engineer.

<sup>4</sup> Letters dated July 22 and 29, 1986, File Nos. 33143, 33146 and 33149, official records in the Office of the State Engineer.

## 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 Applicants nor their predecessors have been able to demonstrate the ability to place the water to beneficial use as applied for under the applications. The State Engineer finds the Applicants and their 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.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

### II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:<sup>6</sup>

- 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.

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<sup>5</sup> NRS Chapter 533 and 534.

<sup>6</sup> NRS § 533.370(2).

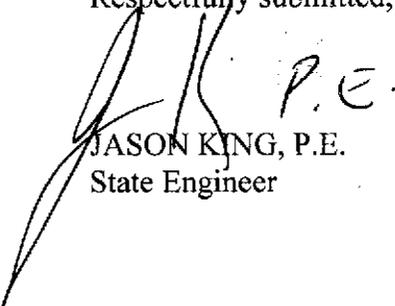
**III.**

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 Applicants cannot demonstrate the ability to place the water to beneficial use. The State Engineer concludes that to approve a water right permit for a project that does not exist and has not existed for more than 36 years would threaten to prove detrimental to the public interest.

**RULING**

Applications 33143, 33146 and 33149 are hereby denied on the grounds that the Applicants are 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.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 24th day of  
January, 2014.