

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

IN THE MATTER OF APPLICATION 32741)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE BIG SMOKY VALLEY)
(NORTHERN PART) GROUNDWATER BASIN)
(137B), NYE COUNTY, NEVADA.)

RULING
4643

GENERAL

I.

Application 32741 was filed on July 8, 1977, by Ingvar Christensen to appropriate 2.7 cubic feet per second (cfs) of underground water for irrigation and domestic purposes within 160 acres of land which is described as being located within the E½ E½ of Section 28, T.10N., R.43E., M.D.B. & M. The proposed point of diversion is described as being located within the SW¼ SW¼ of said Section 28. Information contained within the remarks section of Application 32741 indicates that the application was filed in support of a Carey Land Act Entry application.¹

FINDINGS OF FACT

I.

Application 32741 was filed to appropriate underground water for use upon land which was to be removed from the federal domain through the approval of a Carey Act Land Entry. By letter dated February 6, 1997, the United States Department of Interior Bureau of Land Management (BLM) was requested to provide information to the office of the State Engineer relating to the current status of the Ingvar Christensen Carey Act Land Entry application. A timely response from the BLM was received in the office of the State Engineer which indicated that the Christensen case file had been closed on August 7, 1990. The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 32741 has been rejected by the proper governing

¹ File No. 32741, official records in the office of the State Engineer.

federal agency and said land is still held by the federal government.¹

II.

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 Application 32741 as the irrigation of 160 acres of land which are to be removed from federal jurisdiction by the approval of a Carey Act Land Entry application. On August 7, 1990, the Carey Act Land Entry application filed by Ingvar Christensen was closed by the BLM with ownership of the land requested for removal retained by the federal government. The State Engineer finds that the purpose for which Application 32741 was filed no longer exists; therefore, the necessity to divert water as proposed under said application has ceased.

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

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 32741, is the

² NRS § Chapters 533 and 534.

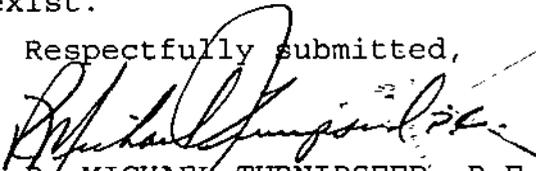
³ NRS § 533.370(3).

irrigation of 160 acres of land which was to be transferred from the federal government to the applicant's control through approval of a Carey Act Land Entry. This attempt to transfer ownership of the lands described within the place of use of Application 32741 was terminated when the BLM closed the applicant's Carey Act Land Entry application on August 7, 1990. The BLM's closure of the applicant's Carey Land Act Entry application removes the purpose for which Application 32741 was filed; therefore, the State Engineer concludes that to approve a water right permit for a project which no longer exists would not be in the public interest.

RULING

Application 32741 is hereby denied on the grounds that it would not be in the public interest to approve a permit for a project which does not exist.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 30th day of
June, 1998.