

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

IN THE MATTER OF APPLICATION 47150)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE NORTH FORK AREA)
GROUNDWATER BASIN (044), ELKO)
COUNTY, NEVADA.)

RULING
4808

GENERAL

I.

Application 47150 was filed on August 10, 1983, by Mark Judson Hines to appropriate 5.4 cubic feet per second of underground water for the irrigation of 307 acres of land which are described as being within the S½ of Section 2, T.36N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 11, T.36N., R.56E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Application 47150 was filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of a Desert Land Entry application. By letter dated November 2, 1983, the United States Department of the Interior, Bureau of Land Management (BLM) informed the State Engineer that the Mark Judson Hines' Desert Land Entry application had been closed by the BLM. The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 47150 has been terminated by the proper governing federal agency.¹

II.

A water right application is filed to request an appropriation of water to be used for a specific purpose within a

¹ File No. 47150, official records in the office of the State Engineer.

well defined place of use which is represented under Application 47150 as the irrigation of 307 acres of land which were to be removed from federal jurisdiction by the approval of a Desert Land Entry application. The Desert Land Entry application filed by Mark Judson Hines was terminated 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 47150 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 47150 is the irrigation of 307 acres of land that was to be transferred from the federal government to the applicant's control through approval of a Desert Land Entry application. The BLM's closure of the applicant's Desert Land Entry application removes the purpose for which Application 47150 was filed. The State Engineer concludes

² NRS Chapters 533 and 534.

³ NRS § 533.370(3).

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that to approve a water right permit for a project that no longer exists would threaten to prove detrimental to the public interest.

RULING

Application 47150 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/cl

Dated this 7th day of
December, 1999.