

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

IN THE MATTER OF APPLICATION 42559)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF CHERRY CREEK WITHIN THE)
EDWARDS CREEK VALLEY GROUNDWATER)
BASIN (133), CHURCHILL COUNTY,)
NEVADA.)

RULING

#4866

GENERAL

I.

Application 42559 was filed on September 30, 1980, by the Alpine Ranching Co. to appropriate 5.0 cubic feet per second of water from Cherry Creek for irrigation and domestic purposes within 320 acres of land located within the S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2, and the S $\frac{1}{2}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3, all within T.19N., R.37E., M.D.B&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T.19N., R.37E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Application 42559 was filed to appropriate Cherry Creek water for use upon land which was to be removed from the federal domain through the approval of a Desert Land Entry application. By letter dated November 9, 1999, the United States Department of the 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 Alpine Ranching Co.'s Desert Land Entry application. A timely response from the BLM was received in the office of the State Engineer which indicated that the BLM had determined that the land contained within the place of use of the subject application was unsuitable for disposal for agricultural purposes. The BLM further informed the State Engineer that as a

¹ File Number 42559, official records in the office of the State Engineer.

result of this determination, the subject Desert Land Entry application file had been closed in their records. The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 42559 has been rejected by the proper governing federal agency.

II.

A water right application is filed to request an appropriation of water for a specific purpose within a well defined place of use which is represented under Application 42559 as the irrigation of 320 acres of land which were to be removed from federal jurisdiction by the approval of the applicant's Desert Land Entry application. The applicant's Desert Land Entry application was closed by the BLM when the land which comprises the place of use of Application 42559 was determined by the BLM to be unsuitable for agricultural purposes. The State Engineer finds that the purpose for which Application 42559 was filed no longer exists, therefore, the necessity to divert water as proposed under Application 42559 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

² NRS Chapter 533.

³ NRS § 533.370(3).

C. the proposed use threatens to prove detrimental to the public interest.

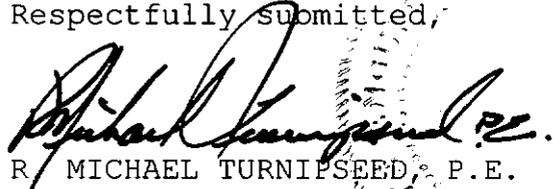
III.

A water right application is filed to appropriate water for a specific purpose which in the case of Application 42559 is the irrigation of 320 acres of land which was to be transferred from the federal government to the applicant's control through the approval of a Desert Land Entry application. This attempt to transfer ownership of the lands described within the place of use under Application 42559 was terminated when the BLM rejected the applicant's Desert Land Entry application. The BLM's closure of the applicant's Desert Land Entry application file removes the purpose for which Application 42559 was filed. The State Engineer concludes 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 42559 is hereby denied on the grounds that it would threaten to prove detrimental to the public interest to approve a permit for a project that does not exist.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/cl

Dated this 8th day of
March, 2000.