

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

IN THE MATTER OF APPLICATION 37469)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE HOT CREEK VALLEY)
HYDROGRAPHIC BASIN (156), NYE)
COUNTY, NEVADA.)

RULING

4894

GENERAL

I.

Application 37469 was filed on April 2, 1979, by Donald H. Ruppel and Nellie D. Ruppel to appropriate 10.8 cubic feet per second of underground water for irrigation and domestic purposes within 640 acres of land located within Section 35, T.5N., R.50E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 35.¹

FINDINGS OF FACT

I.

Application 37469 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 December 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 Donald H. Ruppel and Nellie D. Ruppel Desert Land Entry application.¹ A timely response from the BLM was received in the office of the State Engineer that indicated that the BLM had no record of a Desert Land Entry application being filed in support of Application 37469. The State Engineer finds that the applicants have failed to initiate the procedure necessary to remove the land representing the place of use under

¹ File No. 37469, official records in the office of the State Engineer.

the subject application from federal control, therefore, said land remains under federal jurisdiction.

II.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 37469, is for the irrigation of 640 acres of land that were to be removed from federal control and transferred to the applicants through the filing and approval of a Desert Land Entry application. The State Engineer finds that the applicants' failure to file the required Desert Land Entry application removes the purpose for which Application 37469 was filed.

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.

Application 37469 requests an appropriation of water for a project that does not exist. The State Engineer concludes that to approve a permit where the need to appropriate the water has ceased would threaten to prove detrimental to the public interest.

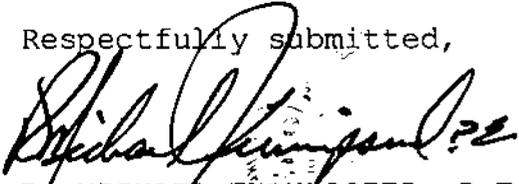
² NRS chapters 533 and 534.

³ NRS § 533.370(3).

RULING

Application 37469 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/dl

Dated this 31st day of
March, 2000.