

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

IN THE MATTER OF APPLICATION 42489)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE STARR VALLEY,)
HYDROGRAPHIC BASIN (43), ELKO)
COUNTY, NEVADA.)

RULING
5098

GENERAL

I.

Application 42489 was filed on September 23, 1980, by Dr. Donald E. Seapy to appropriate 5.4 cubic feet per second of water from an underground source for irrigation purposes within the W $\frac{1}{2}$ of Section 26, T.36N., R.58E., M.D.B.&M. The proposed point of diversion is described as being located within SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.36N., R.58E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Application 42489 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 January 4, 2002, 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 Dr. Donald E. Seapy Desert Land Entry application. A timely response from the BLM was received in the Office of the State Engineer that indicated that the BLM has no record of a Desert Land Entry application being filed in support of Application 42489.¹ The State Engineer finds that there has been no Desert Land Entry application filed to attempt

¹ File No. 42489, official records in the Office of the State Engineer.

to obtain title to the lands representing the place of use under Application 42489; 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 42489 is for the irrigation of 320 acres of land that were to be removed from federal control and transferred to the applicant through the filing and approval of a Desert Land Entry application. The State Engineer finds that the lack of a Desert Land Entry application removes the purpose for which Application 42489 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;
- C. the proposed use conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

III.

Application 42489 requests an appropriation of water for a project that does not exist. The State Engineer concludes that to

² NRS chapters 533 and 534.

³ NRS § 533.370(3).

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approve a permit where the need to appropriate water has ceased would threaten to prove detrimental to the public interest.

RULING

Application 42489 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MR/jm

Dated this 29th day of
January, 2002