

THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION)
37188 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE EAGLE VALLEY)
HYDROGRAPHIC BASIN (200), LINCOLN)
COUNTY, NEVADA.)

RULING

5196

GENERAL

I.

Application 37188 was filed on March 26, 1979, by Ken Lytle to appropriate 5.4 cubic feet per second of underground water for domestic use and irrigation of 320 acres of land located within the W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, and the N $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, all within, T.1N., R.69E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 11.¹

FINDINGS OF FACT

I.

Application 37188 was filed to appropriate underground water for use upon land that was to be removed from the public domain through the Bureau of Land Management's (BLM) approval of the applicant's Desert Land Entry application. By letter dated April 10, 1996, the BLM advised the Office of the State Engineer that it had rejected the applicant's Desert Land Entry application. The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 37188 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 well defined place of use which is represented under Application

¹ File No. 37188, official records in the Office of the State Engineer.

37188 as the irrigation of a 320 acre parcel of land which was to be removed from federal jurisdiction by the approval of the applicant's Desert Land Entry application. The Desert Land Entry application filed by Ken Lytle was rejected by the BLM with the administration of the land requested for removal retained by the federal government. The State Engineer finds that the purpose for which Application 37188 was filed no longer exists; therefore, the necessity to divert water as proposed under the subject 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 or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change 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 37188 is domestic use and irrigation of a 320 acre parcel of land that was to be transferred from the administration of the federal government to the applicant's control through the approval of his underlying Desert Land Entry application. This attempt to transfer

² NRS chapters 533 and 534.

³ NRS § 533.370(3).

ownership of the land described within the place of use under Application 37188 was terminated when the BLM rejected the applicant's Desert Land Entry application. The BLM's rejection of the subject Desert Land Entry application removes the purpose for which Application 37188 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 37188 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/MDB/jm

Dated this 10th day of
January, 2003.