

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

IN THE MATTER OF APPLICATION 58616)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE BIG SMOKY VALLEY -)
NORTHERN PART HYDROGRAPHIC BASIN)
(137B), NYE COUNTY, NEVADA.)

RULING
5692

GENERAL

I.

Application 58616 was filed on March 11, 1993, by Kathy Fisher to appropriate 5.4 cubic feet per second of underground water from the Big Smoky Valley - Northern Part Hydrographic Basin (137B) for the irrigation of 320 acres of land. The proposed place of use is described as being located within the E½ of Section 26, T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of said Section 26.¹

FINDINGS OF FACT

I.

Application 58616 was filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of the Applicant's Desert Land Entry Application, BLM Case #NVN 057142. On January 31, 2005, the United States Department of the Interior, Bureau of Land Management (BLM), Tonopah Office was contacted by telephone to provide information to the Office of the State Engineer relating to the current status of the Applicant's Desert Land Entry Application #NVN 057142. A response from the BLM was received on January 31, 2005, in the Office of the State Engineer, which indicated that the Applicant's Desert Land Entry Application #NVN 057142 had been rejected and the case closed by the BLM on January 31, 2005.¹

¹ File No. 58616, official records in the Office of the State Engineer.

II.

On April 26, 2005, the BLM notified the Office of the State Engineer that it was necessary to re-open the case file for #NVN 057142 due to refunding of monies. Subsequently Desert Land Entry Application #NVN 057142 was again rejected on August 26, 2005, and closed on November 8, 2005. The State Engineer finds that the Applicant's attempt to gain control of the place of use described under Application 58616 has been terminated by the proper governing federal agency.¹

III.

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 58616 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 #NVN 057142. The Desert Land Entry Application was closed by the BLM with the ownership of the land requested for removal retained by the federal government. The State Engineer finds that the purpose for which Application 58616 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;

² NRS chapters 533 and 534.

³ NRS § 533.370(5).

- 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.

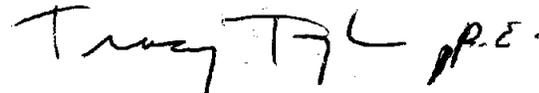
III.

The BLM's rejection/closure of the subject Desert Land Entry Application removes the purpose for which Application 58616 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 58616 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/WHR/jm

Dated this 7th day of
December, 2006.