

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

IN THE MATTER OF APPLICATIONS 44143)  
AND 45014 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE GRASS VALLEY )  
GROUNDWATER BASIN (138), EUREKA )  
COUNTY, NEVADA. )

RULING

# 4664

GENERAL

I.

Application 44143 was filed on July 6, 1981, by Aaron and Randy Buffington to appropriate 6.0 cubic feet per second (cfs) of underground water for irrigation purposes within the NW¼ and the N¼ SW¼ of Section 3; the NE¼ and the N¼ SE¼ of Section 4, T.24N., R.48E., M.D.B. & M.; the S¼ SW¼ of Section 34; and the S¼ SE¼ of Section 33, T.25N., R.48E., M.D.B. & M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 4, T.24N., R.48E., M.D.B. & M. Information contained within the application file indicates that the Application 44143 was filed in support of a Desert Land Entry application.<sup>1</sup>

II.

Application 45014 was filed on November 2, 1981, by Aaron and Randy Buffington to appropriate 6.0 cfs of underground water for irrigation and domestic purposes within the same place of use as described under Application 44143. The proposed point of diversion is described as being located within the NW¼ SW¼ of Section 3, T.24N., R.48E., M.D.B. & M. Information contained within the application file indicates that Application 45014 was filed in support of a Desert Land Entry application.<sup>2</sup>

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<sup>1</sup> File No. 44143, official records in the office of the State Engineer.

<sup>2</sup> File No. 45014, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

Applications 44143 and 45014 were filed to appropriate underground water for use upon land which was to be removed from the federal domain through the approval of a Desert Land Entry. By letter dated February 6, 1997, the United States Department of 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 Aaron and Randy Buffington Desert Land Entry applications. A timely response from the BLM was received in the office of the State Engineer which indicated that the Buffington application files had been closed on August 26, 1988. The State Engineer finds that the applicant's attempt to gain control of the place of use described under Applications 44143 and 45014 has been rejected by the proper governing federal agency and said land is still held by the federal government.<sup>1,2</sup>

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 Applications 44143 and 45014 as the irrigation of 320 acres of land which were to be removed from federal jurisdiction by the approval of Desert Land Entry applications. On August 26, 1988, the Desert Land Entry applications filed by Aaron and Randy Buffington were closed by the BLM with ownership of the land requested for removal retained by the federal government. The State Engineer finds that the purpose for which Applications 44143 and 45014 were filed no longer exists; therefore, the necessity to divert water as proposed under said applications has ceased.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</sup>

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</sup>

- 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.

A water right application is filed to appropriate water for a specific purpose, which in the case of Applications 44143 and 45014 is the irrigation of 320 acres of land which was to be transferred from the federal government to the applicant's control through approval of Desert Land Entry applications. This attempt to transfer ownership of the lands described within the common place of use of Applications 44143 and 45014 was terminated when the BLM closed the applicant's Desert Land Entry application files on August 26, 1988. The BLM's closure of the applicant's Desert Land Entry application files removes the purpose for which Applications 44143 and 45014 were filed. The State Engineer concludes that to approve water right permits for a project which no longer exists would threaten to prove detrimental to the public interest.

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<sup>3</sup> NRS § Chapters 533 and 534.

<sup>4</sup> NRS § 533.370(3).

RULING

Applications 44143 and 45014 are hereby denied on the grounds that it would threaten to prove detrimental to the public interest to approve permits for a project which does not exist.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MDB/cl

Dated this 21st day of  
September, 1998.