

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

IN THE MATTER OF APPLICATION 37178)	
FILED TO APPROPRIATE THE PUBLIC)	<u>RULING</u>
WATERS OF AN UNDERGROUND SOURCE)	
WITHIN THE NORTH FORK AREA GROUND-)	
WATER BASIN (044), ELKO COUNTY, NEVADA.)	# 4777

GENERAL

I.

Application 37178 was filed on March 26, 1979, by John W. Oldham to appropriate 6.0 cubic feet per second of underground water for irrigation and domestic purposes within 200 acres of land which are described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ (Lot 4) of Section 19, T.38N., R.55E., 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 19.¹

FINDINGS OF FACT

I.

Application 37178 was 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 application. By letter dated July 14, 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 John W. Oldham Desert Land Entry application.¹ A timely response from the BLM was received in the office of the State Engineer which indicated that the Oldham case file had been rejected. The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 37178 has been rejected 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 37178 as the irrigation of 200 acres of land which were to be removed from federal jurisdiction by the approval of

¹ File No. 37178, official records in the office of the State Engineer.

a Desert Land Entry application. The Desert Land Entry application filed by John W. Oldham was rejected 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 Application 37178 was filed no longer exists, therefore, the necessity to divert water as proposed under said application has ceased.

CONCLUSION

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.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 37178 is the irrigation of 200 acres of land which was to be transferred from the Federal Government to the applicant's control through approval of a Desert Land Entry application. This attempt to transfer ownership of the lands described within the place of use under Application 37178 was terminated when the BLM rejected the applicant's Desert Land Entry application. The BLM's rejection of the applicant's Desert Land Entry application removes the purpose for which Application 37178 was filed. The State Engineer concludes that to approve a water right permit for a project which no longer exists would threaten to prove detrimental to the public interest.

² NRS Chapters 533 and 534.

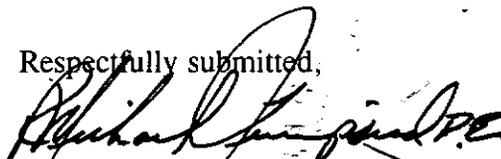
³ NRS § 533.370 (3).

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RULING

Application 37178 is hereby denied on the grounds that it would threaten to prove detrimental to the public interest to approve a permit for a project which does not exist.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/jr

Dated this 7th day of
September, 1999.