

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

IN THE MATTER OF APPLICATION 46388 )  
FILED TO APPROPRIATE AND )  
APPLICATION 46816 FILED TO CHANGE )  
THE POINT OF DIVERSION OF THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE LONG VALLEY )  
GROUNDWATER BASIN (009), WASHOE )  
COUNTY, NEVADA. )

**RULING**

**# 4821**

**GENERAL**

**I.**

Application 46388 was filed on November 23, 1982, by Richard A. Nichols to appropriate 5.4 cubic feet per second (cfs) of underground water for the irrigation of 320 acres of land which are described as being located within the E½ of Section 19, T.41N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SE¼ of said Section 19.<sup>1</sup>

**II.**

Application 46816 was filed on April 13, 1983, by Richard A. Nichols to change the point of diversion of 2.7 cfs of underground water applied for under Application 46388 for irrigation purposes within the same place of use described under Application 46388. The proposed point of diversion is described as being located within the SE¼ NE¼ of said Section 19.<sup>2</sup>

**FINDINGS OF FACT**

**I.**

Application 46388 and 46816 were filed to appropriate underground water for use upon land which was to be removed from the federal domain through the approval of the applicant's Desert Land Entry applications. By letter dated September 15, 1999, the United States Department of the Interior, Bureau of Land Management (BLM) was requested to provide information to the

<sup>1</sup> File No. 46388, official records in the office of the State Engineer.

<sup>2</sup> File No. 46816, official records in the office of the State Engineer.

office of the State Engineer relating to the current status of the Richard A. Nichols Desert Land Entry applications.<sup>1,2</sup> A timely response from the BLM was received in the office of the State Engineer which indicated that the Desert Land Entry application associated with Applications 46388 and 46818 had been withdrawn by the applicant and the case file closed by the BLM in 1985. The State Engineer finds that the applicant's attempt to gain control of the place of use requested under Applications 46388 and 46816 has been terminated by the applicant.

**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 46388 and 46816 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. This attempt to gain control of the proposed place of use was terminated with the applicant's withdrawal of his Desert Land Entry application and the subsequent closure of the case file by the BLM. The State Engineer finds that the purpose for which Applications 46388 and 46816 were filed no longer exists, therefore, the necessity to divert water as proposed under the subject 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>

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

<sup>4</sup> NRS § 533.370(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.

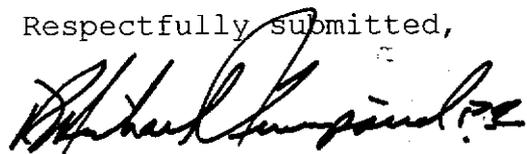
**III.**

A water right application is filed to appropriate water for a specific purpose which in the case of Applications 46388 and 46816 is the irrigation of separate 320 acres of land that were to be transferred from the federal government to the applicant's control through the approval of a Desert Land Entry application. This attempt to transfer ownership of the land described within the place of use under Applications 46388 and 46816 was terminated when the BLM closed the applicant's Desert Land Entry application. The BLM's closure of these Desert Land Entry application removes the purpose for which Applications 46388 and 46816 were filed. The State Engineer concludes that to approve water right permits for a project that no longer exists would threaten to prove detrimental to the public interest.

**RULING**

Applications 46388 and 46816 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/cl

Dated this 7th day of  
December, 1999.