

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

IN THE MATTER OF APPLICATION 32204)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE KELLEY CREEK AREA)
GROUNDWATER BASIN (066), HUMBOLDT)
COUNTY, NEVADA.)

RULING

#4874

GENERAL

I.

Application 32204 was filed on June 22, 1977, by Richard and Kathryn Harrington to appropriate 6.0 cubic feet per second of underground water for irrigation and domestic purposes within 320 acres of land within the NW $\frac{1}{4}$ and portions of the SW $\frac{1}{4}$ of Section 3 and portions of the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4, both within T.36N., R.41E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 3.¹

II.

On August 19, 1996, ownership of Application 32204 was assigned to the Gene and Jo Christison Family Trust in the records of the office of the State Engineer.¹

FINDINGS OF FACT

I.

Application 32204 was filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of a Desert Land Entry application. By letter dated November 9, 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 Gene and Jo Christison Family Trust Desert Land Entry application.¹ A timely response from the BLM was received in the office of the State Engineer that indicated that the BLM had no record of a Desert Land Entry application being

filed in support of Application 32204. The State Engineer finds that the applicants have failed to initiate the procedure necessary to remove the land representing the place of use under the subject application from federal control, therefore, said land remains under federal jurisdiction.

II.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 32204 is for the irrigation of 320 acres of land that was to be removed from federal control and transferred to the applicants through the filing and approval of a Desert Land Entry application. The State Engineer finds that the applicants' failure to file the required Desert Land Entry application removes the purpose for which Application 32204 was filed.

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 conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

¹ File Number 32204, official records in the office of the State Engineer.

² NRS Chapters 533 and 534.

³ NRS § 533.370(3).

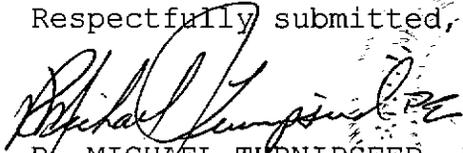
III.

Application 32204 requests an appropriation of water for a project that does not exist. The State Engineer concludes that to approve a permit where the need to appropriate water has ceased would threaten to prove detrimental to the public interest.

RULING

Application 32204 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer



RMT/MDB/cl

Dated this 8th day of
March, 2000.