

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

IN THE MATTER OF APPLICATION 34621 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE HOT CREEK VALLEY )  
HYDROGRAPHIC BASIN (156), NYE )  
COUNTY, NEVADA. )

RULING

4890

GENERAL

I.

Application 34621 was filed on November 16, 1977, by Alice Eleanor Titus to appropriate 2.72 cubic feet per second of underground water for irrigation and domestic purposes within 161.11 acres of land located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 36, T.11N., R.51E., M.D.B.&M., and Lots 1 and 2 of Section 14, T.10N., R.51E., 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 36.<sup>1</sup>

FINDINGS OF FACT

I.

Application 34621 was filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of a Carey Act Land Entry application. By ruling dated March 1, 1985, the State Engineer denied Application 34621 because the applicant did not own or control the land described under the place of use, and therefore, could not demonstrate the ability to place the water to beneficial use. By letter dated July 17, 1984, Alice Titus informed the Nevada Division of State Lands that she was releasing the Carey Act entries as she had filed a Desert Land Entry application with the Bureau of Land Management (BLM) on the same property. By ruling dated August 14, 1985, the State Engineer rescinded the ruling of

<sup>1</sup> File No. 34621, official records in the office of the State Engineer.

March 1, 1985, and held that Application 34621 would remain in a for action status pending the final classification decision from the Bureau of Land Management and a final review of water availability. By letter dated December 9, 1999, the United States Department of the Interior, BLM was requested to provide information to the office of the State Engineer relating to the current status of the Alice Eleanor Titus Desert Land Entry application.<sup>1</sup> 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 34621. The State Engineer finds that the applicant has 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 34621 is for the irrigation of 161.11 acres of land that were to be removed from federal control and transferred to the applicant through the filing and approval of a Desert Land Entry application. The State Engineer finds that the applicant's failure to file the required Desert Land Entry application removes the purpose for which Application 34621 was filed.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>2</sup>

---

<sup>2</sup> NRS chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>3</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.

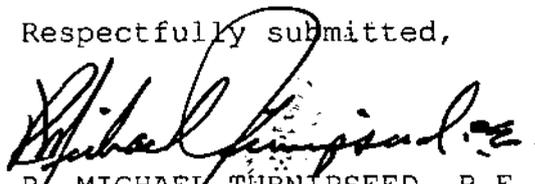
III.

Application 34621 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 34621 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/dl

Dated this 31st day of  
March, 2000.

<sup>3</sup> NRS § 533.370(3).