

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

IN THE MATTER OF APPLICATION 39505)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE BUTTE VALLEY)
(SOUTHERN PART) HYDROGRAPHIC)
BASIN (178B), ELKO COUNTY, NEVADA.)

RULING

#5349

GENERAL

I.

Application 39505 was filed on November 2, 1979, by Lois Bailey, and later assigned to Esther A. White, to appropriate 5.4 cubic feet per second of water from an underground source for irrigation purposes in support of a Desert Land Entry (DLE). The proposed place of use is 320 acres described as being located within S½ of Section 12, T.26N., R.61E., M.D.B.&M. The proposed point of diversion is described as being located within NW¼ SE¼ of said Section 12. The original application was filed for the N½ of Section 10, T.30N., R.26E., which was amended to the aforementioned place of use.¹

FINDINGS OF FACT

I.

A review of records in the Office of the State Engineer show that the place of use described in the application is public land managed by the United States Department of the Interior, Bureau of Land Management (BLM).² On February 8, 2000, the BLM informed the Office of the State Engineer that the DLE application associated with water right Application 39505 had been "Rejected/Denied".¹ The State Engineer finds the applicant does not own or control the land described under the place of use of Application 39505 and the DLE application has been denied.

¹ File No. 39505, official records in the Office of the State Engineer

² United States Bureau of Land Management, "Ruby Lake", 1:100,000-scale topographic map, revised 1998.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁴

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

Application 39505 was filed in support of a DLE application that has been denied by the BLM; therefore, the applicant does not own or control the land described under the place of use of the application and cannot demonstrate the ability to place the water to beneficial use. The State Engineer concludes that to grant an application to appropriate the public waters for irrigation on lands the applicant does not own or control or where the applicant cannot demonstrate the ability to place the water to beneficial use would not be in the public interest.

RULING

Application 39505 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HIR/TW/jm

Dated this 16th day of

April, 2004.

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(4).