

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

IN THE MATTER OF APPLICATION 46232)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE BIG SMOKY VALLEY)
(NORTHERN PART) GROUNDWATER BASIN)
(137B), NYE COUNTY, NEVADA.)

RULING

4668

GENERAL

I.

Application 46232 was filed on October 19, 1982, by Lawrence A. Bell to appropriate 6.0 cubic feet per second of underground water for irrigation purposes within the W $\frac{1}{2}$ of Section 2, T.10N., R.43E., M.D.B. & M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 2.¹

FINDINGS OF FACT

I.

Application 46232 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. By letter dated February 6, 1997, the United States Department of 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 Lawrence A. Bell Desert Land Entry application.¹ A timely response from the BLM was received in the office of the State Engineer which indicated that the Bell case file had been closed on May 15, 1995. The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 46232 has been rejected by the proper governing federal agency and said land is still held by the federal government.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

¹ File No. 46232, official records in the office of the State Engineer.

place of use, which is represented under Application 46232 as the irrigation of 320 acres of land which were to be removed from federal jurisdiction by the approval of a Desert Land Entry application. On May 15, 1995, the Desert Land Entry application filed by Lawrence A. Bell was closed 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 46232 was filed no longer exists; therefore, the necessity to divert water as proposed under said application has ceased.

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.

III.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 46232 is the irrigation of 320 acres of land which was to be transferred from the federal government to the applicant's control through approval of a Desert Land Entry. This attempt to transfer ownership of the lands described within the place of use under Application 46232 was terminated when the BLM closed the applicant's Desert Land Entry application file on May 15, 1995. The BLM's closure of the

² NRS § Chapters 533 and 534.

³ NRS § 533.370(3).

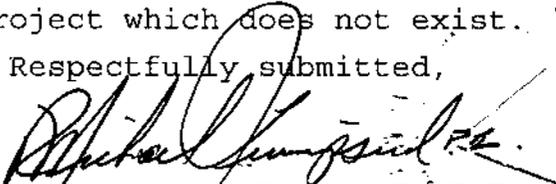
Ruling
Page 3

applicant's Desert Land Entry application file removes the purpose for which Application 46232 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.

RULING

Application 46232 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/MDB/cl

Dated this 21st day of
September, 1998.