

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

IN THE MATTER OF APPLICATION 42738 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE PINE)
VALLEY GROUNDWATER BASIN, (053), EUREKA)
COUNTY, NEVADA.)

RULING

4775

GENERAL

I.

Application 42738 was filed on October 29, 1980, by Mark O. Trayner to appropriate 5.8 cubic feet per second of underground water for irrigation purposes within 320 acres of land which are described as being within the S $\frac{1}{2}$ of Section 4, T.24N., R.50E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 4.¹

II.

Application 42738 was timely protested by Frank Paxton on the following grounds:

Numerous streams, wells and springs surrounding this applicant provide irrigation and stock water for our ranch. These irrigated acreages have (sic) been in production since the early 1900's and late 1800's and many have been adjudicated. The remaining sources have long established water right permits and certificates. To grant this application which proposes to utilize large drafts from underground water sources would create an over appropriated ground water system and seriously endanger existing surface and underground water rights.

FINDINGS OF FACT

I.

Application 42738 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 July 14, 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 Mark O. Trayner Desert Land Entry application.¹ A timely

¹ File No. 42738, official records in the office of the State Engineer.

response from the BLM was received in the office of the State Engineer which indicated that the Trayner case file had been rejected. The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 42738 has been rejected by the proper governing federal agency.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 place of use, which is represented under Application 42738 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. The Desert Land Entry application filed by Mark O. Trayner was rejected 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 42738 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.

² NRS Chapters 533 and 534.

³ NRS § 533.370 (3).

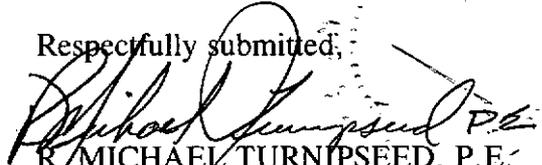
III.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 42738 is for 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 application. This attempt to transfer ownership of the lands described within the place of use under Application 42738 was terminated when the BLM rejected the applicant's Desert Land Entry application. The BLM's rejection of the applicant's Desert Land Entry application removes the purpose for which Application 42738 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 42738 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/jr

Dated this 7th day of
September, 1999.