

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

IN THE MATTER OF APPLICATION 37759 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE NORTH)
FORK AREA GROUNDWATER BASIN, (044), ELKO)
COUNTY, NEVADA.)

RULING
4784

GENERAL

I.

Application 37759 was filed on April 9, 1979, by Judy Fleshman to appropriate 6.0 cubic feet per second of underground water for irrigation and domestic purposes within 320 acres of land which are described as being within the SW¼ of Section 19 and the NW¼ of Section 30, both in T.38N., R.55E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 4 of Section 19, T.38N., R.55E, M.D.B.&M.¹

FINDINGS OF FACT

I.

Application 37759 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 Judy Fleshman Desert Land Entry application.¹ A timely response from the BLM was received in the office of the State Engineer which indicated that the BLM had no record of a Desert Land Entry application being filed in support of Application 37759. The State Engineer finds that the applicant has failed to initiate the procedure necessary to remove the land representing the proposed place of use under the subject application from federal control, therefore, said land remains under federal jurisdiction.¹

II.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 37759 is for the irrigation of 320 acres of land which were to be removed from federal control and transferred to the applicant through the filing and approval

¹ File No. 37759, official records in the office of the State Engineer.

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 37759 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.

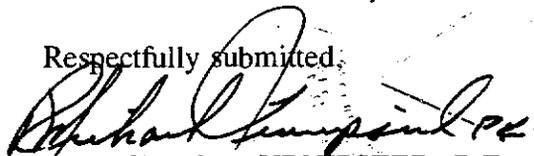
III.

Application 37759 requests an appropriation of water for a project which 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 37759 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/MB/jr

Dated this 7th day of

September, 1999.

² NRS Chapters 533 and 534.

³ NRS § 533.370 (3).