

IN THE OFFICE OF STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATIONS 41961)
AND 42018 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE PUMPERNICKEL)
VALLEY GROUNDWATER BASIN (065),)
HUMBOLDT COUNTY, NEVADA.)

RULING

4823

GENERAL

I.

Application 41961 was filed on August 1, 1980, by Herman P. Wanner, Sr., to appropriate 5.4 cubic feet per second (cfs) of underground water for the irrigation of 320 acres of land located within the W $\frac{1}{2}$ of Section 30, T.34N., R.41E., 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 30.¹

II.

Application 42018 was filed on August 14, 1980, by Herman Wanner, Jr., to appropriate 5.4 cfs of underground water for the irrigation of 320 acres of land located within the E $\frac{1}{2}$ of Section 30, T.34N., R.41E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 30.²

FINDINGS OF FACT

I.

Applications 41961 and 42018 were filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of the applicants' respective Desert Land Entry applications. By letter dated September 8, 1999, the United State 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 Herman P. Wanner, Sr., and Herman Wanner,

¹ File No. 41961, official records in the office of the State Engineer.

² File No. 42018, official records in the office of the State Engineer.

Jr., Desert Land Entry applications.^{1,2} A timely response from the BLM was received in the office of the State Engineer which indicated that the applicants' case files had been closed by the BLM in 1994. The State Engineer finds that the applicants' attempts to gain control of the places of use described under Applications 41961 and 42018 have been terminated by the proper governing federal agency.^{1,2}

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 Applications 41961 and 42018 as the irrigation of two separate 320-acre parcels of land which were to be removed from federal jurisdiction by the approval of the applicants' Desert Land Entry applications. The Desert Land Entry applications filed by Herman P. Wanner, Sr., and Herman Wanner, Jr., were closed by the BLM with the ownership of the land requested for removal retained by the federal government. The State Engineer finds that the purposes for which Applications 41691 and 42018 were filed no longer exists, therefore the necessity to divert water as proposed under the subject application has ceased.

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 an application to appropriate the public waters where:⁴

A. there is no unappropriated water at the proposed source;

³ NRS Chapters 533 and 534.

⁴ NRS § 533.370(3).

- 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 Applications 41961 and 42018 is the irrigation of separate 320-acre parcels of land that were to be transferred from the federal government to the applicants' control through the approval of their respective Desert Land Entry applications. These attempts to transfer ownership of the land described within the places of use under Applications 41961 and 42018 were terminated when the BLM closed the applicants' Desert Land Entry applications. The BLM's closure of the subject Desert Land Entry applications removes the purposes for which Applications 41961 and 42018 were filed. The State Engineer concludes that to approve water right permits for projects that no longer exist would threaten to prove detrimental to the public interest.

RULING

Applications 41961 and 42018 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



R/ MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/cl

Dated this 7th day of
December, 1999.