

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

IN THE MATTER OF APPLICATION 42807)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE PINE VALLEY GROUNDWATER)
BASIN (053) EUREKA COUNTY, NEVADA.)

RULING
#4872

GENERAL

I.

Application 42807 was filed on November 10, 1980, by Robert W. Craig to appropriate 5.8 cubic feet per second of water from an underground source for irrigation purposes within 320 acres of land located within the N½ of Section 18, T.24N., R.50E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NW¼ of said Section 18.¹

II.

Application 42807 was timely protested by Frank Paxton on the following grounds:¹

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 42807 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 application. By letter dated November 9, 1999, the United States Department of the

¹ File Number 42807, official records in the office of the State Engineer.

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 Robert W. Craig Desert Land Entry application. A timely response from the BLM was received in the office of the State Engineer which indicated that the BLM had rejected the Desert Land Entry application associated with Application 42807. The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 42807 was rejected and the case file closed by the proper governing federal agency.

II.

A water right application is filed to request an appropriation of water for a specific purpose within a well defined place of use which is represented under Application 42807 as the irrigation of 320 acres of land which were to be removed from federal jurisdiction by the approval of the applicant's Desert Land Entry application. The applicant's Desert Land Entry application was rejected by the BLM with the ownership of the land requested for removal retained by the federal government. The State Engineer finds that the purpose for which Application 42807 was filed no longer exists, therefore, the necessity to divert water as proposed under Application 42807 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

² NRS Chapters 533 and 534.

³ NRS § 533.370(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 42807 is the irrigation of 320 acres of land which was to be transferred from the federal government to the applicant's control through the approval of his Desert Land Entry application. This attempt to transfer ownership of the lands described within the place of use under Application 42807 was terminated when the BLM rejected the applicant's Desert Land Entry application. The BLM's closure of the applicant's Desert Land Entry application removes the purpose for which Application 42807 was filed. The State Engineer concludes that to approve a water right permit for a project that no longer exists would threaten to prove detrimental to the public interest.

RULING

Application 42807 is hereby denied on the grounds that it would threaten to prove detrimental to the public interest to approve a permit for a project that does not exist.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 8th day of
March, 2000.