

IN THE OFFICE OF STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION 36389)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE SMOKE CREEK DESERT)
HYDROGRAPHIC BASIN (021), WASHOE)
COUNTY, NEVADA.)

RULING

4891

GENERAL

I.

Application 36389 was filed on January 2, 1979, by Ruth J. Raney to appropriate 3.4 cubic feet per second of underground water. The proposed manner and place of use is the irrigation of 200 acres of land located within the W $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T.30N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 16.¹

FINDINGS OF FACT

I.

Application 36389 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 December 9, 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 status of the Ruth J. Raney 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 determined the land contained within the place of use of the subject application to be unsuitable for disposal for agricultural purposes¹. The State Engineer finds that the applicant's attempt to gain control

¹ File No. 36389, official records in the office of the State Engineer.

of the place of use described under Application 36389 has been rejected 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 36389 as the irrigation of 200 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 when the land, which comprises the place of use of Application 36389, was determined by the BLM to be unsuitable for irrigation.

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 36389, is the irrigation of 200 acres of land which were to be transferred from

² NRS chapters 533 and 534.

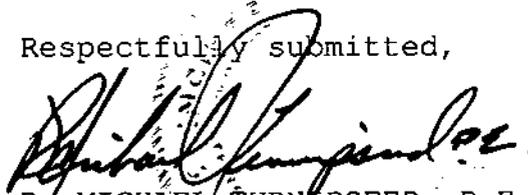
³ NRS § 533.370(3).

the federal government to the applicant's control through the approval of a Desert Land Entry application. This attempt to transfer ownership of the lands described within the place of use under Application 36389 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 36389 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.

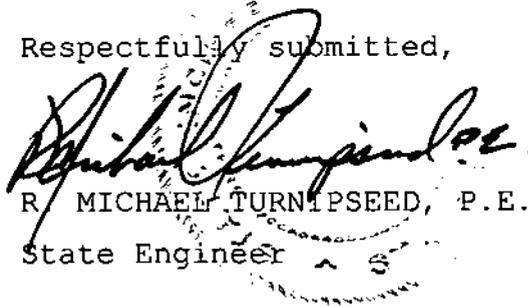
RULING

Application 36389 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/dl

Dated this 31st day of
March, 2000.