

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

IN THE MATTER OF APPLICATION 56955)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE BIG SMOKY VALLEY -)
NORTHERN PART HYDROGRAPHIC BASIN)
(137B), NYE COUNTY, NEVADA.)

RULING

#5488

GENERAL

I.

Application 56955 was filed on November 22, 1991, by Ronald D. Osterhoudt to appropriate 5.4 cubic feet per second of underground water for irrigation and domestic purposes. The proposed place of use is described as being located within the N $\frac{1}{2}$ of Section 5, T.9N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, T.9N., R.43E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Application 56955 was filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of the applicant's Desert Land Entry Application, BLM Case #NVN 055354. On January 28, 2005, the United States Department of the Interior, Bureau of Land Management (BLM), Battle Mountain Office was contacted by telephone to provide information to the Office of the State Engineer relating to the current status of the Ronald D. Osterhoudt Desert Land Entry Application #NVN 055354. A timely faxed response from the BLM was received later on January 28, 2005, in the Office of the State Engineer, which indicated that the applicant's Desert Land Entry had been withdrawn and the case closed by the BLM on March 30, 1995.¹

¹ File No. 56955, official records in the Office of the State Engineer.

The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 56955 ended with the withdrawal of Desert Land Entry Application #NVN 055354.

II.

A water right application is filed to appropriate water for a specific purpose within a well defined place of use, which is represented under Application 56955 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 #NVN 055354. The Desert Land Entry application filed by Ronald D. Osterhoudt was withdrawn with the ownership of the land requested for removal retained by the federal government. The State Engineer finds that the purpose for which Application 56955 was 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.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 or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

² NRS chapters 533 and 534.

³ NRS § 533.370(4).

III.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 56955 is the irrigation of 320 acres of land that were to be transferred from the federal government to the applicant's control through the approval of his Desert Land Entry Application #NVN 055354. This attempt to transfer ownership of the land described within the place of use under Application 56955 was terminated when the applicant's Desert Land Entry Application #NVN 055354 was withdrawn. The BLM's subsequent closure of the application removes the purpose for which Application 56955 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 56955 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/WHR/jm

Dated this 2nd day of
June, 2005.