

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

IN THE MATTER OF APPLICATIONS)
36993 AND 36997 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE)
WITHIN THE SUSIE CREEK AREA)
HYDROGRAPHIC BASIN (50), ELKO)
COUNTY, NEVADA.)

RULING

#6109

GENERAL

I.

Application 36993 was filed on March 13, 1979, by Claude W. Newman to appropriate 5.4 cubic feet per second (cfs) of underground water for irrigation purposes. The proposed place of use is described as being located within the SW $\frac{1}{4}$ of Section 25 and within the N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T.34N., R.52E., 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 Section 25, T.34N., R.52E., M.D.B.&M.¹

II.

Application 36997 was filed on March 13, 1979, by Joseph F. Kaiser to appropriate 5.4 cfs of underground water for irrigation purposes. The proposed place of use is described as being located within SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, of Section 24, in T.34N., R.52E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T.34N., R.52E., M.D.B.&M.²

¹ File No. 36993, official records in the Office of the State Engineer.

² File No. 36997, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Application 36993 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 (DLE) Application, BLM Case #NVN 022743. On March 20, 2009, the United States Department of the Interior, Bureau of Land Management (BLM), Elko Office was contacted and asked to provide information to the Office of the State Engineer relating to the current status of the Claude W. Newman DLE Application #NVN 022743. A written response from the BLM was received on March 20, 2009, which indicated that the Applicant's DLE was cancelled on October 3, 2008.¹

II.

Application 36997 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 DLE Application, BLM Case #NVN 022669. On February 22, 2011, the BLM, Elko Office was contacted and asked to provide information to the Office of the State Engineer relating to the current status of the Joseph F. Kaiser DLE Application #NVN 022669. A written response from the BLM was received on February 28, 2011, which indicated that the Applicant's DLE application was cancelled on October 3, 2008.²

III.

A water right application is filed to appropriate water for a specific purpose within a well-defined place of use, which is represented under Applications 36993 and 36997 as the irrigation of 320 acres of land per application and which were to be removed from federal jurisdiction by the approval of the Applicants' DLE applications. These DLE Applications were

cancelled and the ownership of the land requested for removal was retained by the federal government. The State Engineer finds that the purpose for which Applications 36993 and 36997 were filed no longer exists; therefore, the necessity to divert water as proposed under the subject applications 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;
- 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.

III.

A water right application is filed to appropriate water for a specific purpose, which in the cases of Applications 36993 and 36997 is the irrigation of 320 acres of lands, per application, that were to be transferred from the federal government to the Applicants' control through the approval of their DLE applications. This attempt to transfer ownership of the lands described within the place of use under Applications 36993 and 36997 were terminated when the Applicants' DLE applications were cancelled. The State Engineer concludes that to approve a water

³ NRS chapters 533 and 534.

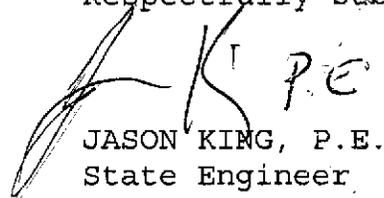
⁴ NRS § 533.370(5).

right permit for a project that no longer exists would threaten to prove detrimental to the public interest.

RULING

Applications 36993 and 36997 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 6th day of
May, 2011.