

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

IN THE MATTER OF APPLICATION 38086 FILED )  
TO APPROPRIATE THE PUBLIC WATERS OF AN )  
UNDERGROUND SOURCE WITHIN THE HUNTING- )  
TON VALLEY GROUNDWATER BASIN, (047), ELKO )  
COUNTY, NEVADA. )

RULING

**# 4774**

GENERAL

I.

Application 38086 was filed on May 2, 1979, by Robert J. Proctor to appropriate 5.4 cubic feet per second of underground water for irrigation and domestic purposes within 320 acres of land which are described as being within the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$ , E $\frac{1}{2}$  W $\frac{1}{2}$ , and the W $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 32, T.28N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 32.<sup>1</sup>

FINDINGS OF FACT

I.

Application 38086 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. By letter dated July 14, 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 current status of the Robert J. Proctor Desert Land Entry application.<sup>1</sup> A timely response from the BLM was received in the office of the State Engineer which indicated that the Proctor case file had been rejected by the BLM. The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 38086 has been rejected by the proper governing federal agency and said land is still held by the federal government.<sup>1</sup>

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 Application 38086 as the irrigation of 320 acres of land which were to be removed from federal jurisdiction by the approval of a Desert Land Entry application. The Desert Land Entry application filed by Robert J. Proctor was rejected by the BLM with ownership of the land requested for

<sup>1</sup> File No. 38086, official records in the office of the State Engineer.

removal retained by the federal government. The State Engineer finds that the purpose for which Application 38086 was filed no longer exists, therefore, the necessity to divert water as proposed under said application has ceased.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>2</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>3</sup>

- 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 38086 is the irrigation of 320 acres of land which was to be transferred from the federal government to the applicant's control through approval of a Desert Land Entry. This attempt to transfer ownership of the lands described within the place of use under Application 38086 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 38086 was filed. The State Engineer concludes that to approve a water right permit for a project which no longer exists would threaten to prove detrimental to the public interest.

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<sup>2</sup> NRS Chapters 533 and 534.

<sup>3</sup> NRS § 533.370 (3).

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Application 38086 is hereby denied on the grounds that it would threaten to prove detrimental to the public interest to approve a permit for a project which does not exist.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MB/jr

Dated this 7th day of  
September, 1999.