

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

IN THE MATTER OF APPLICATION 23329)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF TULEDAD CREEK, DUCK LAKE)
VALLEY GROUNDWATER BASIN (016),)
WASHOE COUNTY, NEVADA.)

RULING

4588

GENERAL

I.

Application 23329 was filed on August 23, 1966, by Lewis F. Cockrell to appropriate 10.0 cubic feet per second, not to exceed 5,700 acre feet annually of water from Tuledad Creek for irrigation and storage purposes. The proposed place of use is described as being 4,600 acres of land contained within all of Sections 23, 24 and 25 and portions of Sections 13, 14, 26, 35 and 36, all in T.37N., R.18E., together with portions of Sections 18, 19, 30 and 31 all in T.37N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T.36N., R.18E., M.D.B.&M. Application 23329 became ready for action by the State Engineer on April 10, 1967.¹

FINDINGS OF FACT

I.

Be letter dated February 22, 1968, the applicant was informed by the office of the State Engineer that Application 23329 had been processed and that a permit would be issued when plans and specifications for the proposed dam had been submitted for review and approval by the State Engineer. On January 20, 1978, and July 28, 1978, the applicant was requested to provide the office of the State Engineer with evidence of his continued interest in placing the water requested for appropriation and storage under Application 23329 to a beneficial use. The applicant was informed that a failure to respond within 30 days would result in Application 23329 being subject to denial. The State Engineer finds that a timely

¹ File No. 23329, official records in the office of the State Engineer.

response to the State Engineer's letters was received from the applicant's agent which indicated that the project was experiencing environmental problems, and the applicant requested the application be held for one year.

II.

By letter dated September 6, 1979, the applicant was again requested to provide the office of the State Engineer with evidence of his continued interest regarding Application 23329. The applicant was informed that a failure to respond within 30 days would result in the denial of Application 23329. The State Engineer finds that by letter received October 9, 1979, the applicant's agent indicated that the Bureau of Land Management had considerable work to do on their Environmental Study which would cause a delay in granting of the right-of-way and construction of the dam, that archaeological findings in the area may give cause for a major dig in the area, and expressed hope that within six months some dispensation could be made. The State Engineer finds that action was withheld on Application 23329 until August 1, 1980.¹

III.

The State Engineer finds that further requests for delay in acting on the application were filed and granted in 1980, 1981, 1982, 1983, 1984 through November 22, 1985.¹ The State Engineer finds that no further requests for delay in acting on Application 23329 have been filed and sufficient time has passed for the applicant to inform the State Engineer of his intentions. The State Engineer finds that over a period in excess of twenty one years, the applicant and his successor in interest have failed to provide any evidence that they are proceeding in good faith and with due diligence in placing any of the water requested for appropriation and storage under Application 23329 to the proposed beneficial use.

CONCLUSIONS OF LAW

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 a permit under an application to appropriate the public waters where:³

- A. there is no unappropriated water at the proposed source, or
- B. the proposed use conflicts with existing rights, or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

Application 23329 was filed on August 23, 1966, to appropriate water from Tuledad Creek to be impounded for storage and irrigation purposes. Since November 1984 the applicant and his successors in interest have failed to submit any evidence of a continued interest in said application to the office of the State Engineer. The State Engineer concludes that a period of twenty one years is more than sufficient time to allow the applicant to formulate his plans, the application must be acted upon and it would not be in the public interest to grant a permit on an application about which the applicant no longer expresses an interest nor has supplied any of the requested information.

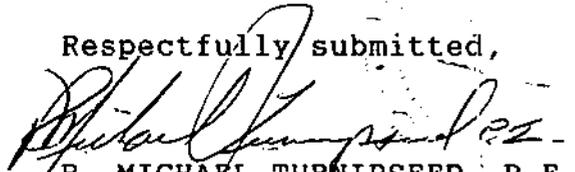
² NRS Chapter 533.

³ NRS § 533.370(3).

RULING

Application 23329 is hereby denied on the grounds that the applicant has expressed no interest in the application in 13 years, and it would be detrimental to the public interest to grant the application without the information requested by the State Engineer in 1968.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 9th day of
December, 1997.