

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

IN THE MATTER OF APPLICATION 49341 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE GREAT SALT LAKE DESERT )  
HYDROGRAPHIC BASIN (192), ELKO )  
COUNTY, NEVADA. )

RULING

4901

GENERAL

I.

Application 49341 was filed on September 5, 1985, by Kirk Allen Terry to appropriate 2.0 cubic feet per second of underground water for irrigation purposes within 320 acres of land located within the N $\frac{1}{2}$  of Section 16, T.32N., R.69E., 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 said Section 16.<sup>1</sup>

FINDINGS OF FACT

I.

Application 49341 was filed to appropriate underground water for use upon land that was to be removed from the federal domain through the approval of a Desert Land Entry application. By letter dated January 3, 2000, 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 Kirk Allen Terry Desert Land Entry application. A timely response from the BLM was received in the office of the State Engineer that indicated that the BLM had rejected the Desert Land Entry application filed in support of Application 49341.<sup>1</sup> The State Engineer finds that the BLM's rejection of the Kirk Allen Terry Desert Land Entry application terminated the applicant's attempt to obtain title to the lands

<sup>1</sup> File No. 49341, official records in the office of the State Engineer.

representing the place of use under Application 49341, therefore, said land remains under federal jurisdiction.

II.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 49341 is for the irrigation of 320 acres of land that were to be removed from federal control and transferred to the applicant through the filing and approval of a Desert Land Entry application. The State Engineer finds that the BLM's rejection of the Kirk Allen Terry Desert Land Entry application removes the purpose for which Application 49341 was filed.

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.

Application 49341 requests an appropriation of water for a project that does not exist. The State Engineer concludes that to approve a permit where the need to appropriate water has ceased would threaten to prove detrimental to the public interest.

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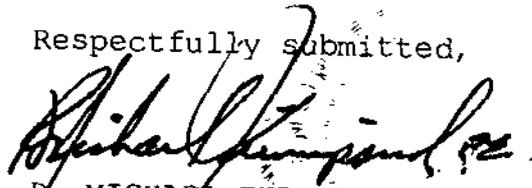
<sup>2</sup> NRS chapter 533 and 534.

<sup>3</sup> NRS § 533.370(3).

RULING

Application 49341 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,

  
B. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MDB/dl

Dated this 31st day of  
March, 2000.