

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

IN THE MATTER OF APPLICATION 33306 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE GARDEN VALLEY )  
HYDROGRAPHIC BASIN (172), NYE )  
COUNTY, NEVADA. )

RULING

# 4918

GENERAL

I.

Application 33306 was filed on August 23, 1977, by Robert G. Simmons to appropriate 2.7 cubic feet per second of underground water for irrigation and domestic purposes within 160 acres of land located within the SW1/4 of Section 1, T.2N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the NW1/4 SW1/4 of said Section 1.<sup>1</sup>

FINDINGS OF FACT

I.

Application 33306 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 Carey Act Land Entry application. By letter dated July 6, 1999, the Nevada Division of State Lands notified the State Engineer that the Carey Act Land Entry application associated with Application 33306 had been cancelled.<sup>1</sup> The State Engineer finds that the applicant's attempt to gain control of the place of use described under Application 33306 has been rejected by the proper governing state agency.

II.

A water right application is filed to appropriate water for a specific purpose, which in the case of Application 33306 is for the irrigation of land that was to be removed from federal control and transferred to the applicant through the filing and approval of the applicant's Carey Act Land Entry application. The Carey Act

<sup>1</sup> File Number 33306, official records in the office of the State Engineer.

Land Entry application filed by Robert G. Simmons was cancelled by the Nevada Division of State Lands with the ownership of the land requested for removal retained by the federal government. The State Engineer finds that the purpose for which Application 33306 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.<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 33306 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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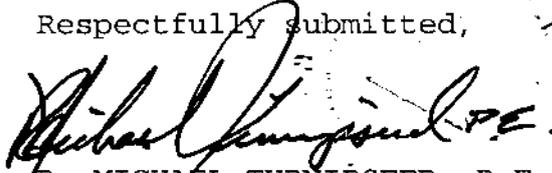
<sup>2</sup> NRS chapters 533 and 534.

<sup>3</sup> NRS § 533.370(3).

RULING

Application 33306 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/cl

Dated this 5th day of  
May, 2000.