

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

IN THE MATTER OF APPLICATION 59837 )  
AND CHANGE APPLICATION 70845 FILED )  
TO APPROPRIATE THE PUBLIC WATERS OF )  
AN UNDERGROUND SOURCE WITHIN THE )  
SPRING VALLEY HYDROGRAPHIC BASIN )  
(201), LINCOLN COUNTY, NEVADA. )

RULING

**#5781**

GENERAL

I.

Application 59837 was filed on March 21, 1994, by Lee A. Pearson to appropriate 5.4 cubic feet per second of underground water from the Spring Valley Hydrographic Basin for the irrigation of 320 acres of land within portions of the SW $\frac{1}{4}$  NW $\frac{1}{4}$  and NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 3; the NE $\frac{1}{4}$  NE $\frac{1}{4}$  and SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4; SW $\frac{1}{4}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$ , and NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 10; the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  SW $\frac{1}{4}$ , and SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 11; the SW $\frac{1}{4}$  NW $\frac{1}{4}$  and NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 13; and the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$  and SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 14, all in T.4N., R.69E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 10, T.4N., R.69E.<sup>1</sup>

II.

Application 70845 was filed on January 23, 2004, by Lee Pearson to change the point of diversion and place of use of Application 59837 for the irrigation of 320 acres of land within the SE $\frac{1}{4}$  of Section 4 and the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , and SW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 9 all in T.3N., R.70E., 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 Section 4, T.3N., R.70E.<sup>2</sup>

<sup>1</sup> File No. 59837, official records in the Office of the State Engineer.

<sup>2</sup> File No. 70845, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Application 59837 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 respective Desert Land Entry (DLE) Application, BLM Case #NVN 058613. On October 6, 1997, the United States Department of the Interior, Bureau of Land Management (BLM), contacted the Office of the State Engineer by letter requesting information regarding the availability of water in the Camp Valley Hydrographic Basin and regarding whether Lee Pearson has a water right application on file. By return letter on July 13, 1999, the Office of the State Engineer informed the BLM that Application 59837 was filed to appropriate water within the Spring Valley Hydrographic Basin and that there was sufficient water available to support the application. On September 18, 2003, the BLM contacted the Office of the State Engineer by letter at the request of Mr. Pearson to provide an update of the status of his DLE application. In this letter it is stated that his DLE application would be addressed after the resolution of a public land trespass. At the request of the Office of the State Engineer the Ely BLM Field Office faxed a copy of the Applicant's Serial Register Page on December 2, 2005. The Applicant's DLE application #NVN 058613 was withdrawn and his case closed on March 5, 2004.<sup>1</sup>

The State Engineer finds that the Applicant's attempt to gain control of the place of use described under Application 59837 has been terminated by the proper governing federal agency.

II.

Application 70845 was filed to change the point of diversion and place of use of Application 59837. The remarks of the application read:

This is for a Desert Land Entry. It is a new location within the same basin. The Bureau of Land Management

requested a change because of the poor configuration of the original application

On August 4, 2006, the Office of the State Engineer contacted the Ely BLM Field Office by telephone for the status of any new DLE applications filed by Lee Pearson. No other applications had been submitted.<sup>1,2</sup>

The State Engineer finds that the Applicant has not attempted to gain control of the place of use described under Application 70845 from the proper governing federal agency.

### III.

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 59837 as the irrigation of a 320 acre parcel of land, which was to be removed from federal jurisdiction by the approval of the Applicant's respective Desert Land Entry Application #NVN 058613. The Desert Land Entry application filed by the Applicant was withdrawn with the ownership of the land requested for removal retained by the federal government.<sup>1</sup>

The State Engineer finds that the purpose for which Application 59837 was filed no longer exists; therefore, the necessity to divert water as proposed under the subject application has ceased.

### IV.

A water right application to change is filed to request a change in point of diversion, manner of use and/or place of use of an existing water right. Application 70845 was filed to change the point of diversion and the place of use of Application 59837 to correct the land configuration for the Applicant's DLE application at the request of the BLM. The only DLE application in the name of Lee Pearson is Desert Land Entry Application #NVN 058613, which has been withdrawn. Thus Application 70845 does not serve to correct the place of use to match a DLE application.<sup>2</sup>

The State Engineer finds that the purpose for which Application 70845 was filed does not exist; 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>3</sup>

#### II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.<sup>4</sup>

#### III.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>5</sup>

- 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.

#### IV.

The State Engineer concludes that the BLM's closure of the subject Desert Land Entry application removes the purpose for which Application 59837 was filed and, that to approve a water right permit for a project that no longer exists would threaten to prove detrimental to the public interest. The State Engineer concludes that since no water rights are being permitted under the initial application for appropriation, no water rights exist that

---

<sup>3</sup> NRS chapters 533 and 534.

<sup>4</sup> NRS § 533.375.

<sup>5</sup> NRS § 533.370(5).

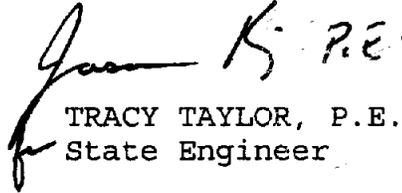
Ruling  
Page 5

can be changed under Application 70845; therefore, it also must be denied.

RULING

Application 59837 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest. Application 70845 is denied on the grounds that no water right exists that can be changed by the application, and therefore to grant a permit under said application would also threaten to prove detrimental to the public interest.

Respectfully submitted,

 P.E.  
TRACY TAYLOR, P.E.  
State Engineer

TWT/MJW/jm

Dated this 7th day of  
September, 2007.