

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

IN THE MATTER OF APPLICATIONS 48114,)
48115 AND 49457 FILED TO APPROPRIATE)
THE PUBLIC WATERS FROM AN UNDERGROUND)
SOURCE WITHIN THE EDWARDS CREEK VALLEY)
GROUNDWATER BASIN IN CHURCHILL COUNTY)
NEVADA.)

RULING

3878

GENERAL

Application 48114¹ was filed on June 18, 1984 by Marvin Fred Porteous to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 160 acres of land within the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 33, T.19N., R.37E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T.19N., R.37E., M.D.B.&M.

Application 48115¹ was filed on June 18, 1984 by Marvin Fred Porteous to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 160 acres of land within the S $\frac{1}{2}$ NW $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 33, T.19N., R.37E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T.19N., R.37E., M.D.B.&M.

Application 49457¹ was filed on October 18, 1985 by Marvin Fred Porteous to change the point of diversion and place of use of Application 48115 being 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 160 acres of land within the NE $\frac{1}{4}$ of Section 33 (primary 160A), and commingled with other rights in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 33, SW $\frac{1}{4}$ of Section 28, and the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 28, (commingled 320A) all in T.19N., R.37E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, T.19N., R.37E., M.D.B.&M.

¹ Public record in the office of the State Engineer.

FINDINGS OF FACT

I.

Records and information available to the State Engineer indicate that Applications 48114, 48115 and 49457 were filed in support of Desert Land Entry Applications.¹

II.

By letter dated June 13, 1991, the United States Department of Interior, Bureau of Land Management, notified the State Engineer that the following Desert Land Entry Application had been closed and the case file is dead.¹

BLM ENTRY

<u>NO.</u>	<u>NAME</u>	<u>LAND DESCRIPTION</u>
N-42734	Marvin Fred Porteous	T19N, R37E, Sec. 28, S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 33, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$

The described place of use of Application 48114 is within the area of the above Desert Land Entry Application N-42734.

III.

Application 48115 was filed on lands that had Right of Entry Allowed to another applicant. By letter dated November 8, 1983, the Bureau of Land Management notified the State Engineer that a Right of Entry had been allowed for Carey Act Application N-32088 embracing land within the S $\frac{1}{2}$ NW $\frac{1}{4}$, and the N $\frac{1}{2}$ SW $\frac{1}{4}$ Section 33, T.19N., R.37E., M.D.B.&M. The project assignee was David E. Williams. Permit 40447 was issued to David E. Williams on May 29, 1985, for the irrigation of 160 acres in the S $\frac{1}{2}$ NW $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ Section 33, T.19N., R.37E., M.D.B.&M. The application was

subsequently assigned to Jo Geyer. Permit 40447 is still in good standing.²

IV.

The land described under Application 49457 as the primary 160 acres is located on public land. The land described as commingled 320 acres consists of 160 public land and the remaining 160 acres is private land. The private land portion already has been issued a water Permit 48113 on March 13, 1986. The public land portion of Application 49457 has not been granted entry by the Bureau of Land Management.³

The point of diversion of Application 49457 is located on public land within Desert Land Entry Application N-42734. This Desert Land Entry case file is closed and the State Engineer has no record of the Bureau of Land Management granting a right of way for a well site.³

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.⁴

² Public record in the office of the State Engineer filed under Application 40447.

³ Public record in the office of the State Engineer under Permits 48113 and 49457.

⁴ NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit where:

- A. There is no unappropriated water at the proposed source,
- B. The proposed use conflicts with existing rights,
- C. The proposed use threatens to prove detrimental to the public interest.⁵

III.

The applicant does not own or control the land under Application 48114, 48115 and a portion of Application 49457. The applicant does not own or control the land described as the point of diversion of Application 49457.

IV.

To grant applications to appropriate the public water for irrigation on lands the applicant does not own or control or where the applicant cannot demonstrate the ability to place the water to beneficial use would not be in the public interest and welfare.

V.

To grant an application for a point of diversion on land the applicant does not own or control is not in the public interest.

⁵ NRS 533.370.

RULING

Applications 48114 and 48115 are herewith denied on the grounds that to grant the applications for irrigation purposes on lands that the applicant does not own or control and cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest.

Application 49457 is denied on the grounds that to grant an application which has a point of diversion on public land to which entry has not been granted and for land the applicant does not own or control would not be in the public interest.

Respectfully submitted,


R. MICHAEL TURNIPSEED
State Engineer

RMT/MJR/bk

Dated this 17th day of
March, 1992.