

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

IN THE MATTER OF APPLICATIONS 59795,)
59796 AND 59797 FILED TO CHANGE THE)
PLACE OF USE, MANNER OF USE AND THE)
POINT OF DIVERSION OF THE WATERS OF)
AN UNDERGROUND SOURCE, HERETOFORE)
APPROPRIATED WITHIN THE WESTERN PART)
OF THE LEMMON VALLEY GROUND WATER)
BASIN (92(a)), WASHOE COUNTY,)
NEVADA.)

RULING

4246

GENERAL

I.

Application 59795 was filed on March 3, 1994, by Dan Douglass to change the manner of use, the place of use and the point of diversion of 0.00184 cubic feet per second (cfs) of underground water heretofore appropriated under Permit 52235. The proposed manner and place of use is for quasi-municipal and domestic purposes within Section 11, T.21N., R.18E., M.D.B.&M. The proposed point of diversion is described as being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T.21N., R.18E., M.D.B.&M.¹

II.

Application 59796 was filed on March 3, 1994, by Dan Douglass to change the manner of use, the place of use and the point of diversion of 0.0018 cfs of underground water heretofore appropriated under Permit 52232. The proposed manner and place of use is for quasi-municipal and domestic purposes within Section 11, T.21N., R.18E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T.21N., R.18E., M.D.B.&M.²

¹ File No. 59795, official records in the Office of the State Engineer.

² File No. 59796, official records in the Office of the State Engineer.

III.

Application 59797 was filed on March 3, 1994, by Dan Douglass to change the manner of use, the place of use and the point of diversion of 0.0018 cfs of underground water heretofore appropriated under Permit 52229. The proposed manner of use and place of use is for quasi-municipal and domestic purposes within Section 11, T.21N., R.18E., M.D.B.&M. The proposed point of diversion is described as being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T.21N., R.18E., M.D.B.&M.³

IV.

All of the above mentioned applications were timely protested by the Silver Lake Property Owners Association for the following reasons and on the following grounds:^{1,2,3}

The original permits 34762-34764 on which these Change Applications are based were issued 3/14/78. Orders 388 and 391 were issued by the State Engineer declaring a moratorium on the issuance of permits, and designating Lemmon Valley (Basins 92a and 92b) as a critical ground water area in 1971, 7 years before the granting of these permits. These permits, therefore, should not have been issued to begin with.

Beneficial use of Applications [sic][permits] 34762-34764 was to be proven by 4/14/83. These applications [sic][permits] ask for a second extension for proving beneficial use on water, that to this date, has not been proven. Since no attempt to prove beneficial use has been made in 16 years, there should be no additional Change Applications granted that will result in the extension of time required to complete proof of beneficial use.

Under the provisions of NRS 534, the State Engineer established a general procedure to deny extensions of time for proving beneficial use in Basins 92A and 92B. To approve these Change Applications would be in direct contradiction to order 388, since approval of Change Applications extends the life of unperfected permits.

³ File No. 59797, official records in the Office of the State Engineer.

We the 500+ domestic well owners in over-appropriated Basin 92A, feel that the letter and spirit of these Orders and Provisions should be adhered to. The denying of these Change Applications and the canceling of these unperfected water rights would be in keeping with the corrective measures that the State Engineer has put in place.

FINDINGS OF FACT

I.

The State Engineer cancelled Permits 52229, 52232 and 52235 on June 17, 1994, for failure on the part of the permittee to comply with the terms of the permits. In compliance with NRS 533.395, the State Engineer received a petition for review of the above mentioned permits and an administrative hearing to consider the cancellation was held on December 13, 1994. Evidence and testimony were received into the record, and State Engineer's Ruling No. 4164 was issued on February 2, 1995, affirming the cancellation of Permits 52229, 52232 and 52235.⁴ The State Engineer finds that the water rights represented by Permits 52229, 52232 and 52235, which the subject applications propose to change, were cancelled and are no longer water rights in good standing.

II.

The State Engineer finds that no proceeding on a petition for judicial review as allowed under NRS 533.450 reversed the decision cancelling Permits 52229, 52232 or 52235. Thus, the cancellation is final.

III.

The State Engineer finds that permits cannot be granted for Applications 59795, 59796 and 59797 because there are no valid water rights that can be changed by the applications.

⁴ File Nos. 52229, 52232 and 52235, official records in the Office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

NRS 533.345(1) provides that an application can be filed to change the point of diversion, manner or place of use of water already appropriated. Water already appropriated, in reference to a change application, refers to water represented by a permit or certificate in good standing.⁶ Where a permit has been cancelled, the water right is no longer valid; thus, it is not in good standing and cannot be used to support a change application.

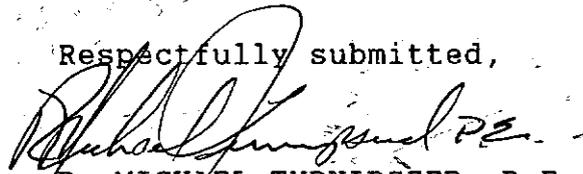
III.

The State Engineer concludes that as Permits 52229, 52232 and 52235 are cancelled, there are no water rights existing in those permits that can be changed by permits granted for Applications 59795, 59796 and 59797, respectively.

RULING

Applications 59795, 59796 and 59797 are hereby denied on the grounds that the base permits were cancelled in 1994; thus, no water rights exist which can be changed by Applications 59795, 59796 and 59797.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 21st day of
November, 1995.

⁵ NRS Chapters 533 and 534.

⁶ NRS 533.324.