

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

IN THE MATTER OF APPLICATION 61205 FILED)
TO CHANGE THE POINT OF DIVERSION AND PLACE)
OF USE OF THE UNDERGROUND WATERS OF THE)
AMARGOSA DESERT GROUNDWATER BASIN (230),)
NYE COUNTY, NEVADA.)

RULING

4459

GENERAL

I.

Application 61205 was filed on May 5, 1995, by Lawrence and Linda Bray to change the point of diversion and place of use of 0.5 cubic feet per second (cfs) not to exceed 139.5 acre feet annually (AFA), of the underground waters previously appropriated under Permit 17340, Certificate 5865 within the Amargosa Desert Groundwater Basin, Nye County, Nevada. The proposed use remains irrigation and domestic. The place of use is proposed to be changed to 27.9 acres within the S $\frac{1}{2}$ Section 32, T.16S., R.49E., M.D.B.&M., more specifically, 17.2 acres in Government Lot 2 and 10.7 acres in Government Lot 7 of said Section 32. The existing place of use is composed of 6.4 acres in Government Lot 1 and 21.5 acres in Government Lot 8 of said Section 32. The proposed point of diversion is located within Government Lot 7 of said Section 32. The existing point of diversion is located within Government Lot 1 of said Section 32.¹

II.

Application 61205 was timely protested by Amargosa Resources, Incorporated (ARI) on the grounds that the base right which said application proposes to change (Permit 17340, Certificate 5865) has been forfeited for non-use.¹

FINDINGS OF FACT

I.

On May 1, 1996, a hearing was held to consider the possible forfeiture of the base right, Permit 17340, Certificate 5865.

¹File No. 61205, official records in the Office of the State Engineer.

After consideration of the evidence, the State Engineer ruled that Permit 17340, Certificate 5865 was not forfeited.² This ruling was not appealed. The State Engineer finds that the protest filed by ARI is without merit, given the ruling that the base right was not forfeited.

II.

At the hearing, the applicant testified that he irrigated his property which he felt was the water righted land under Permit 17340, Certificate 5865. He was using a well that he felt was the certificated well. When he became aware that this portion of his property was outside of the place of use of said certificate and that his present well was not the certificated well, he filed Application 61205 to correct this situation. The proposed place of use is a field located adjacent to the existing place of use, within the boundaries of his property. The proposed point of diversion is located within the proposed place of use, about 2,000 feet from the existing point of diversion. There is nothing on the record of the hearing held on May 1, 1996, or in the records of the office of the State Engineer that would indicate that the approval of Application 61205 would conflict with any existing rights or threaten to prove detrimental to the public interest. The State Engineer finds that the approval of Application 61205 will not conflict with any existing rights or threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action.³

²State Engineer's Ruling No. 4400, dated August 8, 1996, official records of the office of the State Engineer.

³NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting an application to change the public waters of Nevada where:⁴

- A. The proposed change conflicts with existing rights or
- B. The proposed change threatens to prove detrimental to the public interest.

III.

The State Engineer has ruled that the base right for Application 61205 is not forfeited. Therefore, the State Engineer concludes that the protest to Application 61205 is without merit and said Application may be approved.

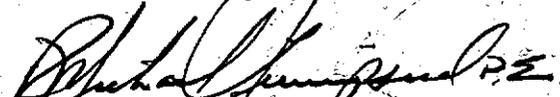
IV.

The State Engineer concludes that the approval of Application 61205 would not conflict with existing rights or threaten the prove detrimental to the public interest.

RULING

The protest to Application 61205 is hereby overruled and said Application is hereby approved subject to existing rights and the payment of the statutory permit fees.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/ab

Dated this 6th day of
December, 1996.