

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

IN THE MATTER OF PERMITS 4434, 4435, AND 4436)
FILED TO APPROPRIATE THE PUBLIC WATERS OF)
VARIOUS SURFACE WATER SOURCES WITHIN THE)
DIAMOND VALLEY HYDROGRAPHIC BASIN (153),)
EUREKA COUNTY, NEVADA.)

RULING

4787

GENERAL

I.

Application 4434 was filed on May 16, 1917, by Martin Etchemendy to appropriate 0.25 cfs (cubic feet per second) of water from Moritz Nager Creek for stockwatering and domestic purposes within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T.20N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34.¹

II.

Application 4435 was filed on May 16, 1917, by Martin Etchemendy to appropriate 0.025 cfs of water from Sheep Spring for stockwatering and domestic purposes within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T.19N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 2.²

III.

Application 4436 was filed on May 16, 1917, by Martin Etchemendy to appropriate 0.025 cfs of water from South Regli Springs Numbers 1, 2, and 3, for stockwatering and domestic purposes within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T.19N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 10.³

FINDINGS OF FACT

I.

It has been a long established policy within the office of the State Engineer that it is the permittee's responsibility to provide the office of the State Engineer with notification of any changes which have occurred in ownership or addresses associated with a specific water right. On November 1, 1917, the ownership of Permits 4434, 4435, and 4436 was assigned by the office of the State

¹ File No. 4434, official records in the office of the State Engineer.

² File No. 4435, official records in the office of the State Engineer.

³ File No. 4436, official records in the office of the State Engineer.

Engineer from Martin Etchemendy to Gaston Uhalde. By letter dated December 28, 1918, the State Engineer was directed by Gaston Uhalde's agent to direct all further correspondence to Edna Covert Plummer, Eureka, Nevada.¹ A pencil written notation made upon the file cover on Permit 4434 on November 9, 1934, also indicates that ownership of Permit 4434 may have been acquired by the Palma Brothers.¹ As of the date of this ruling, neither the permittee or any possible successor in interest have notified the State Engineer of any changes which have occurred in ownership, agents or addresses of record as they relate to the subject permits. Therefore, the State Engineer finds that the current owner and address of record under Permits 4434, 4435, and 4436 is Gaston Uhalde care of Edna Covert Plummer, Eureka, Nevada.

II.

By certified letter dated June 17, 1999, the permittee and his agent were notified at their common address of record of the need to submit evidence of a continued interest in completing Permits 4434, 4435, and 4436. Both parties were allowed thirty days from the date of the letter to respond with the condition that a failure to timely supply this information, would result in the cancellation of the subject permits. The June 19, 1999, certified mailing was returned to the office of the State Engineer with the envelope stamped "Insufficient Address", "Not Deliverable as Addressed", and "Attempted, Not Known", by the United States Postal Service.¹ The State Engineer finds that the permittee has failed to maintain a valid mailing address at which the State Engineer can notify him in regard to matters concerning Permits 4434, 4435, and 4436.

III.

The State Engineer approved Permits 4434, 4435, and 4436 on November 13, 1917, with the condition that the Proof of Beneficial Use was due for each permit on July 13, 1919. Accordingly, the required Proofs of Beneficial Use were filed in the office of the State Engineer on July 16, 1919.^{1,2,3} For reasons which are not known, no further action was taken by the State Engineer towards the issuance of certificates of appropriation under these permits. The State Engineer finds that the permittee has established satisfactory proof that a beneficial use of water has occurred under the subject permits with the filing of the 1919 Proofs of Beneficial Use, however, these permits are incomplete in that they have never been issued certificates of appropriation.

IV.

The State Engineer recognizes that many significant changes have occurred in the management of the States natural resources since the approval of Permit 4434, 4435, and 4436 in November 1917. All of the surface sources and places of use described under these permits are located upon land which is now controlled by the federal government. The utilization of this land for grazing purposes is based upon an allotment system which requires the approval of a federal grazing permit by the United States Department of the Interior, Bureau of Land Management prior to the placement of livestock upon the range land. Information supplied by the Battle Mountain District Office of the BLM indicates that the federal grazing lease which contains the subject permits is held by the Cottonwood Land and Cattle Company. The State Engineer finds that the permittee of record under the subject permits is not entitled to place livestock upon the federal lands in question.

V.

Under the provisions of NRS 533.503 (1-b), the State Engineer shall not issue a certificate of appropriation based upon a permit to appropriate water for stockwatering purposes on public land unless the person who has made satisfactory proof that the water has been beneficially used is entitled to place on the land, the livestock which have been watered pursuant to the permit. The State Engineer finds that although Gaston Uhalde has submitted satisfactory evidence in the form of the 1919 Proofs of Beneficial Use, that the waters appropriated under Permits 4434, 4435, and 4436 have been beneficially used, he is not legally entitled to place livestock upon the subject federal range lands, therefore, under the provisions of NRS § 533.503 (1-b), the State Engineer is prohibited from issuing certificates of appropriation under these permits.

VI.

The State Engineer is restricted by statute as to the issuance of certificates of appropriation under Permits 4434, 4435, and 4436, therefore, the State Engineer finds that these permits can not be issued certificates and must be cancelled.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

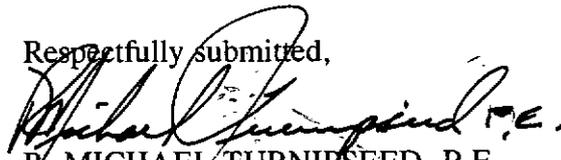
II.

Before a certificate of appropriation can be issued based upon a permit which appropriates water for stockwatering purposes upon federal land, that the permittee must be legally entitled to place livestock upon said lands. Information provided by the proper federal regulatory agency indicates that the permittee fails to meet this criteria, therefore, the State Engineer concludes that the issuance of certificates of appropriation under Permits 4434, 4435, and 4436 would violate the provisions established under NRS § 533.503 (1-b) and would threaten to prove detrimental to the public interests.

RULING

Permits 4434, 4435, and 4436 are hereby cancelled under the provisions of NRS § 533.503 (1-b) on the grounds that the issuance of certificates of appropriation under these permits would violate NRS § 533.503 (1-b) which would threaten to prove detrimental to the public interest..

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/jr

Dated this 9th day of
September, 1999.

⁴ NRS Chapter 533.