

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

IN THE MATTER OF APPLICATION 52743)
FILED TO CHANGE THE POINT OF DIVERSION)
AND PLACE OF USE OF A PORTION OF THE)
PUBLIC WATERS OF BOULDER SPRING)
HERETOFORE APPROPRIATED UNDER)
PERMIT 5643, CERTIFICATE 1528, LINCOLN)
COUNTY, NEVADA.)

RULING
5166

GENERAL

I.

Certificate 1528 was issued on March 13, 1929, for 0.01 cubic feet per second (cfs) for stockwatering purposes. The water right represented by Permit 5643, Certificate 1528, is from Boulder Spring. The place of use is described as being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, T.7S., R.65E., M.D.B.&M. The point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T.7S., R.65E., M.D.B.&M.¹

II.

Application 52743 was filed on November 30, 1988, by Rachael Ballow to change the point of diversion and place of use of 0.0025 cfs, a portion of water heretofore appropriated under Permit 5643, Certificate 1528. The proposed place of use is the SW $\frac{1}{4}$ of Section 25, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 26, all of Section 36, T.7S., R.65E., M.D.B.&M.; the E $\frac{1}{2}$ of Section 1, E $\frac{1}{2}$ E $\frac{1}{2}$, portion SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, portion E $\frac{1}{2}$ of Sections 13, 24, and 25, portion SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, portion of Section 36, T.8S., R.65E., M.D.B.&M.; all of Section 1, except for a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ of Section 12, all of Section 14, portion of Section 2, portion SE $\frac{1}{4}$ of Section 10, portions of Sections 11, 15, and 22, T.9S., R.65E., M.D.B.&M.; SW $\frac{1}{4}$ of Section 6, all of Section 7, portion of Section 8, all of Sections 17, 18, and 19, W $\frac{1}{2}$ of Section 30, T.8S., R.66E., M.D.B.&M. The existing place of use is the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, T.7S.,

¹ File No. 5643, official records in the Office of the State Engineer.

R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 26, T.7S., R.65E., M.D.B.&M. The existing point of diversion is within the NW¼ SE¼ of Section 16, T.7S., R.65E., M.D.B.&M. This application was filed to correct the actual location of Boulder Spring as originally filed under Permit 5643.²

FINDINGS OF FACT

I.

Permit 5643, Certificate 1528, is currently held in the ownership of Hiko Land and Cattle Co. (50% interest) and the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints (50% interest). Application 52743 was filed in the name of Rachael Ballow. A deed was submitted on March 19, 1993, that transfers the ownership of the land to which Application 52743 is appurtenant to Henry R. Brackenbury and Joi L. Brackenbury as joint tenants. On August 4, 1993, certified letters were sent to Henry R. Brackenbury and Joi L. Brackenbury, Rachael Ballow, and agent Richard Fonger regarding Application 52743. The letter advised that before any action could be taken toward the issuance of a permit under Application 52743, the title of base right Permit 5643, Certificate 1528, must be brought forward to show Henry R. Brackenbury and Joi L. Brackenbury as current owners of record for the portion of water to be changed from Permit 5643, Certificate 1528. The applicants were warned that failure to submit the required information might result in denial of Application 52743. Properly endorsed certified mail receipts from Rachael Ballow and Richard Fonger were received in the Office of the State Engineer on August 16, 1993. The letter to Henry R. and Joi L. Brackenbury was returned by the U.S. Postal Service stamped "RETURNED TO SENDER". The State Engineer finds that it is the responsibility of the applicant to provide a current address. The State Engineer finds there was no record of a response to the request for information.²

II.

An examination of records on file with the State Engineer shows that no documentation has been submitted to correct the deficiencies in title regarding Permit 5643, Certificate 1528, and Application 52743. The applicants have had over nine years from the last certified notice to

² File No. 52743, official records in the Office of the State Engineer.

correct said deficiencies. The State Engineer shall not consider a change application for approval until the owner of the change application can demonstrate title to the base right being changed. The State Engineer finds that Application 52743 may be considered for denial.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit for an application to change the public waters where:⁴

- 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.

III.

The State Engineer concludes that to approve an application to change water rights that are not in the name of the applicants would threaten to prove detrimental to the public interest.

IV.

The applicants have failed to submit requested documentation to the State Engineer's Office. The State Engineer concludes that without this documentation sufficient information is not available to properly guard the public interest.

³ NRS chapters 533.

⁴ NRS § 533.370(3).

RULING

Application 52743 is hereby denied on the grounds that to issue this permit would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 21st day of
October, 2002.