

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

IN THE MATTER OF APPLICATION 47942)
FILED TO CHANGE THE POINT OF DIVERSION)
AND PLACE OF USE OF A PORTION OF THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE PREVIOUSLY APPROPRIATED)
UNDER PERMIT 22034, CERTIFICATE 7569,)
WITHIN THE WINNEMUCCA SEGMENT)
HYDROGRAPHIC BASIN (70), HUMBOLDT)
COUNTY, NEVADA.)

RULING
#5299

GENERAL

I.

Application 47942 was filed on March 28, 1984, by Donnell J. and Andree L. Richards to change the point of diversion and place of use of 0.0245 cubic feet per second (cfs), a portion of water heretofore appropriated under Permit 22034 Certificate, 7569. The proposed place of use is described as being located within portions of the E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T.35N., R.37E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 11.¹

II.

Certificate 7569 was issued under Permit 22034 on February 22, 1971, for 0.63 cfs of water from an underground source for irrigation and domestic purposes. The place of use is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.36N., R.37E., M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 34.²

FINDINGS OF FACT

I.

Based on deeds submitted July 2, 1984, the Office of the State Engineer assigned a portion of Permit 22034, Certificate 7569, to Glenn Tipton. This portion of water is described in the deeds as, "That portion of permit 22034 - certificate 7569 as shown and described on application to

¹ File No. 47942, official records in the Office of the State Engineer.

² File No. 22034, official records in the Office of the State Engineer.

change the point of diversion and place of use of a portion of the above mentioned permit and certificate. Said application was filed with the Division of Water Resources March 28, 1984 and assigned serial no. 47942. The amount of water being transferred is 0.0245 cubic feet per second and is appurtenant [sic] to 3 acres in E½ NE¼ NE¼ NW¼ Section 11 T35N R37E MDB&M.”² Application 47942 was filed in the names of Donnell J. Richards and Andree L. Richards. The portion of water under Permit 22034, Certificate 7569, which forms the basis for change Application 47942, is currently held in the ownership of Glenn Tipton. The State Engineer shall not consider a change application for approval unless the owner of the change application can demonstrate title to that portion of the permit that forms the basis for the change application.³ A review of the records in the Office of the State Engineer show that the owners of change Application 47942 have not submitted any evidence demonstrating title to that portion of Permit 22034, Certificate 7569, which forms the basis for change Application 47942.⁴ The State Engineer finds that the relevant portion of Permit 22034, Certificate 7569, is in different ownership than change Application 47942.

II.

The State Engineer finds that the applicants under change Application 47942 have had at least 19 years to submit proof of ownership of that portion of Permit 22034, Certificate 7569, that forms the basis for change Application 47942. The State Engineer finds that it is the responsibility of the applicants to show proof of ownership.

III.

The map filed in support of change Application 47942 displays the area to be removed from irrigation under Permit 22034, Certificate 7569.⁵ The area illustrated on the map is 3.0 acres within the W½ SE¼ SW¼ of Section 34, T.36N., R.37E., M.D.B.&M. A review of Permit 22034, Certificate 7569, show that abrogated Permit 41608 previously stripped about half of the 3.0 acres proposed to be removed from irrigation under change Application 47942. The State Engineer finds that change Application 47942, attempts to remove water from irrigation that has already been stripped by a previous water right permit; therefore, Application 47942 is subject to denial.

³ NRS § 533.370(3).

⁴ Nevada Division of Water Resources Titles Database, Reports of Selected Records, Permit 22034, Certificate 7569, and Application 47942, May 15, 2003.

⁵ Map No. 47942, official records in the Office of the State Engineer, filed March 28, 1984.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.⁶

II.

The State Engineer is prohibited by law from granting a permit for an application to change the public waters where:⁷

- 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 Application 47942, to change a water right that is not in the name of the applicants, would threaten to prove detrimental to the public interest.

IV.

An application may be filed to change the point of diversion, manner or place of use of water already appropriated.⁸ Water already appropriated, in reference to a change application, refers to water represented by a water right permit or certificate in good standing.⁹ Where a water right certificate has been abrogated by prior change permits, the water right no longer exists on the areas stripped of water and the stripped areas cannot be used as the basis for a subsequent change application. The State Engineer concludes that Permit 22034, Certificate 7569, cannot be used as the basis for change Application 47942 because at least some portion of the certificate that forms the basis of the change application has been abrogated; therefore, Application 47942 cannot be approved.

⁶ NRS chapters 533 and 534.

⁷ NRS § 533.370(3).

⁸ NRS § 533.325.

⁹ NRS § 533.324.

RULING

Application 47942 is hereby denied on the grounds that a portion of the certificate, which forms the basis of this change application, has been abrogated. Application 47942 is also denied on the grounds that to issue a permit to change a water right not in the name of the applicants would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 17th day of
October, 2003.