

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

IN THE MATTER OF APPLICATIONS)
58662, 58663, 58664 AND 58665 FILED)
TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE BLACK ROCK)
DESERT HYDROGRAPHIC BASIN (028),)
HUMBOLDT COUNTY, NEVADA.)

RULING

#5405

GENERAL

I.

Application 58662 was filed on March 25, 1993, by William C. Cummings and later assigned to Irvin E. Brown and Alan L. Cain, to appropriate 6.0 cubic feet per second (cfs) of water from an underground source for irrigation and domestic purposes. The proposed place of use is described as 1,600 acres located within W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1, S $\frac{1}{2}$ of Section 2, SE $\frac{1}{4}$ of Section 3, NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, N $\frac{1}{2}$ N $\frac{1}{2}$, Lots 1 through 8, and Lots 10 through 12 of Section 11, SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 14, all in T.40N., R.27E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T.40N., R.27E., M.D.B.&M.¹

II.

Application 58663 was filed on March 25, 1993, by William C. Cummings and later assigned to Irvin E. Brown and Alan L. Cain, to appropriate 6.0 cfs of water from an underground source for irrigation and domestic purposes. The proposed place of use is about 1,600 acres described as being located within W $\frac{1}{2}$ SW $\frac{1}{2}$ of Section 1, S $\frac{1}{2}$ of Section 2, SE $\frac{1}{4}$ of Section 3, NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, N $\frac{1}{2}$ N $\frac{1}{2}$, Lots 1 through 8, and Lots 10 through 12 of Section 11, SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 14, all in T.40N., R.27E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T.40N., R.27E., M.D.B.&M.²

¹ File No. 58662, official records in the Office of the State Engineer.

² File No. 58663, official records in the Office of the State Engineer.

III.

Application 58664 was filed on March 25, 1993, by William C. Cummings and later assigned to Irvin E. Brown and Alan L. Cain, to appropriate 6.0 cfs of water from an underground source for irrigation and domestic purposes. The proposed place of use is about 1,600 acres described as being located within W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1, S $\frac{1}{2}$ of Section 2, SE $\frac{1}{4}$ of Section 3, NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, N $\frac{1}{2}$ N $\frac{1}{2}$, Lots 1 through 8, and Lots 10 through 12 of Section 11, SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 14, all in T.40N., R.27E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T.40N., R.27E., M.D.B.&M.³

IV.

Application 58665 was filed on March 25, 1993, by William C. Cummings and later assigned to Irvin E. Brown and Alan L. Cain, to appropriate 6.0 cfs of water from an underground source for irrigation and domestic purposes. The proposed place of use is about 960 acres described as being located within N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6; E $\frac{1}{2}$ of Section 7; SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 8; SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16; NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 17, all in T.39N., R.27E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, T.39N., R.27E., M.D.B.&M.⁴

V.

William C. Cummings was the original owner of record for Applications 58662, 58663, 58664 and 58665. On April 22, 1994, deeds were submitted, which transferred the ownership of these applications to Irvin E. Brown (93.5% interest) and Alan L. Cain (6.5% interest). The Summary of Ownership, within each application file, reflects this change of ownership with an effective date of June 14, 1994.^{1,2,3,4}

FINDINGS OF FACT

I.

On June 21, 1995, Mr. Irvin E. Brown contacted the State Engineer's office regarding Applications 58662 through 58665. An office memorandum was placed in the application files on June 22, 1995, highlighting the phone conversation. Per the memo,

³ File No. 58664, official records in the Office of the State Engineer.

⁴ File No. 58665, official records in the Office of the State Engineer.

Mr. Brown indicated that he now owns Mr. Cain's portion of the applications. Mr. Brown also requested that his address be changed to a post office box in Winnemucca, Nevada, and that the Division of Water Resources postpone action on the applications. Mr. Brown followed his phone conversation with a letter received in the Office of the State Engineer on June 30, 1995. In the letter, Mr. Brown again requested that the State Engineer withhold action on the applications. He also indicated that the acreages filed for and what has been in use are totally different and additional time was needed to sort out the acreages.¹

On October 22, 2002, the applicants and their agent were contacted regarding their interest in pursuing the applications and to determine if the conflicts in the place of use had been sorted out. Also, the applicants were requested to submit the proper forms and documents to update ownership, if a change in ownership occurred as indicated in 1995. The certified letter to applicant Alan L. Cain was returned to the Office of the State Engineer stamped "Not Deliverable As Addressed Unable to Forward". Also written on the envelope was "Alan Cain moved 5 yrs. ago." Applicant Irvin E. Brown responded by letter on December 20, 2002. Mr. Brown indicated that he wished to pursue the applications and submitted photocopies of the applications with the proposed place of use and total acreage crossed out in blue ink and a new acreage and place of use hand written on the applications. Mr. Brown again indicated that he had acquired Alan Cain's portion of the applications.¹

On June 12, 2003, the applicants and their agent were contacted by certified mail regarding the applications. The applicants were asked to clarify the amended places of use submitted by Mr. Brown on December 20, 2002, because the proposed amendments appeared to be contradictory to the original purpose of the applications. The applicants were also requested to file a Report of Conveyance if an ownership change had taken place. The certified letter to applicant Alan L. Cain was returned to the Office of the State Engineer stamped, "Not Deliverable As Addressed Unable to Forward". The U.S. Postal Service returned a properly endorsed certified receipt, from the applicants' agent, to the Office of the State Engineer on June 16, 2003. The letter to applicant Irvin E. Brown was returned to the Office of the State Engineer by the U.S. Postal Service stamped "Unclaimed". The letter was re-sent by regular mail on July 7, 2003.¹

On August 5, 2003, applicant Irvin E. Brown contacted the Office of the State Engineer by phone. The applicant stated that he was the sole owner of the applications, he wished to pursue the applications, G.W. Reno was not his agent, and John Milton III was his agent. The conversation was memorialized in a certified letter to the applicant and agent, dated August 12, 2003. This certified letter gave the applicant three options regarding the applications. The first option was to do nothing, the second option was to submit additional information, and the third option was to withdraw the applications. The applicant and agent were warned that the Office of the State Engineer cannot withhold action on these applications indefinitely and failure to provide additional information within 60 days of the date of the certified letter would result in the applications being reviewed based on the information currently on file. The certified letter to the applicant was returned to the Office of the State Engineer stamped "Unclaimed". The letter was re-sent by regular mail on September 3, 2003. The U.S. Postal Service returned a properly endorsed certified receipt, from the applicant's agent, to the Office of the State Engineer on August 14, 2003.¹

The State Engineer finds that the applicants and their agents were properly notified of the request for additional information by certified letters dated June 12, 2003, and August 12, 2003, and have failed to submit the information requested.

II.

By letter dated June 22, 1995, applicant Irvin E. Brown requested a delay in processing the applications because, "It seems that the acreages filed for and what has been in use is totally different." The State Engineer finds that over eight years have passed since the request to withhold action. The State Engineer finds that it is not in the public interest to withhold action on these applications indefinitely.

III.

On three separate occasions Irvin E. Brown has informed the Office of the State Engineer that he has obtained ownership of Alan L. Cain's portion of the applications. Mr. Brown was directed by the Office of the State Engineer to file the necessary paperwork for transferring ownership by three separate certified letters dated October 22, 2002, June 12, 2003, and August 12, 2003.¹ To date, the Office of the State Engineer has not received any supporting documentation regarding the alleged change of ownership.

The State Engineer finds that it is not in the public interest to approve applications where the ownership may be incorrect.

CONCLUSIONS

I.

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

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.⁶

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water 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.

IV.

The applicants were properly notified of the requirement for additional information regarding these applications and have failed to submit the requested information to the Office of the State Engineer. The State Engineer concludes that the applications cannot be approved without the requested information.

⁵ NRS chapters 533 and 534.

⁶ NRS § 533.375.

⁷ NRS § 533.370(4).

RULING

Applications 58662, 58663, 58664 and 58665 are hereby denied on the grounds their issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 28th day of
June, 2004.