

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

IN THE MATTER OF CHANGE)
APPLICATION 63848 FILED TO)
CHANGE THE PLACE OF USE OF)
THE PUBLIC WATERS OF THE)
LAS VEGAS VALLEY ARTESIAN)
HYDROGRAPHIC BASIN (212),)
CLARK COUNTY, NEVADA.)

RULING
5681

GENERAL

I.

Application 63848 was filed on February 17, 1998, by Michael DeMarco, Angelo Thomas DeMarco and Janet Lang DeMarco to change the place of use of 0.10 cubic feet per second (cfs), not to exceed 72.4 acre-feet annually, of the underground water of the Las Vegas Valley Artesian Hydrographic Basin previously appropriated under Permit 11409, Certificate 3233. The point of diversion is described as being located within the NW¼ SW¼ of Section 28, T.20S., R.61E., M.D.B.&M. The proposed place of use is described as being located within a portion of the NW¼ SW¼ of Section 28, T.20S., R.61E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Pursuant to State Engineer's Ruling No. 4644, the State Engineer held that the total quantity of water certificated under Permit 11409 was 29.48 acre-feet annually of which 17.24 acre-feet had been forfeited.² The decision that a portion of this water right had been forfeited was upheld by the District Court by decision dated April 5, 1999. However, the District Court was concerned that the State Engineer may have overlooked the fact that the DeMarcos had filed change Application 63848 and requested the State Engineer on remand to articulate whether he had considered the fact that the change application had been filed.

¹ File No. 63484, official records in the Office of the State Engineer.

² State Engineer's Ruling No. 4644, dated July 9, 1998, official records in the Office of the State Engineer.

The State Engineer affirmed his decision as to the forfeiture in State Engineer's Ruling on Remand No. 4907, and held that the filing of the change application after the forfeiture proceeding had been initiated did not cure the forfeiture.³ The District Court remanded the matter a second time and asked the State Engineer to consider the question of whether a change in place of use could take place before the forfeiture of the water right and if the change application had been filed consistent with the use the DeMarcos had made of the water was it likely the change application would have been granted. In State Engineer's Second Ruling on Remand No. 5126,⁴ the State Engineer found that where a water right being sought to be changed has not been placed to its authorized beneficial use for the statutory five-year period prior to the filing of the change application, the State Engineer makes a determination whether the water right is subject to forfeiture before acting on the change application and that other significant issues prevented consideration of the change application.

The State Engineer finds his decision as to the forfeiture was not overturned on appeal and on December 7, 2005, the Nevada Supreme Court affirmed that the Applicants are not entitled to any consideration of change Application 63848.

II.

The State Engineer finds that Permit 11409, Certificate 3233, which the Applicants sought to change under Application 63848 was declared forfeited and the Nevada Supreme Court has affirmed the change application is not entitled to consideration; therefore, Application 63848 cannot be approved because the water right it seeks to change no longer exists.

³ State Engineer's Ruling No. 4907, dated April 18, 2000, official records in the Office of the State Engineer.

⁴ State Engineer's Ruling No. 5126, dated June 5, 2002, official records in the Office of the State Engineer.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁶

- 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.

Nevada Revised Statute 533.325 provides that an application can be filed to change the point of diversion, manner or place of use of water already appropriated. Water already appropriated refers to water represented by a permit or certificate in good standing.⁷ The State Engineer concludes that where a water right has been forfeited the water right is no longer valid; thus, it is not in good standing and cannot be used to support a change application; therefore, Application 63848 is subject to denial.

⁵ NRS chapters 533 and 534.

⁶ NRS § 533.370(5).

⁷ NRS 533.324.

RULING

Application 63848 is hereby denied on the grounds that the water right that forms the basis for the change application has been forfeited and is no longer an active water right available to be changed, and to grant a permit to change a forfeited water right would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/SJT/jm

Dated this 30th day of
November, 2006.