

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

IN THE MATTER OF SECONDARY )  
APPLICATION 24881-1 FILED TO )  
APPROPRIATE THE PUBLIC WATERS )  
OF THE SOUTH FORK OF THE )  
HUMBOLDT RIVER WITHIN THE )  
DIXIE CREEK-TENMILE CREEK AREA )  
(048) HYDROGRAPHIC BASIN, ELKO )  
COUNTY, NEVADA. )

**RULING**

**#5950**

**GENERAL**

**I.**

Application 24881-1 was filed on April 28, 1969, by the Pershing County Water Conservation District as a secondary application under Application 24881 to appropriate 120,000 acre feet annually of the surface waters of the South Fork of the Humboldt River for domestic use and the irrigation of 43,809 acres located within the Pershing County Water Conservation District Area. The proposed point of diversion is described as being located within the NW¼ SW¼ of Section 4, T.32N., R.55E., M.D.B.&M., Hylton Dam and Reservoir.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

The underlying primary water right Permit 24881, which supports Application 24881-1, was abrogated by Permit 48951 on July 31, 1985.<sup>2</sup> The State Engineer finds that no water right remains under abrogated Permit 24881, which could support Application 24881-1. The State Engineer further finds that the abrogation of Permit 24881 left no remaining valid primary water right to support Secondary Application 24881-1.

**CONCLUSIONS**

**I.**

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

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<sup>1</sup> File No. 24881-1, official records in the Office of the State Engineer.

<sup>2</sup> File No. 24881, official records in the Office of the State Engineer.

<sup>3</sup> NRS chapter 533.

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</sup>

- 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.

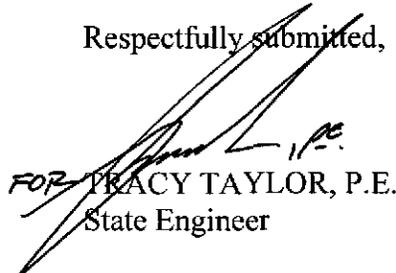
**III.**

Nevada Revised Statute § 533.325 provides that an application can be filed to change the place of diversion, manner or place of use of water already appropriated. Water already appropriated, in reference to a secondary application, refers to water represented by a primary storage water right permit or certificate in good standing.<sup>5</sup> Where a permit has been abrogated, the abrogated water right is no longer in effect; therefore, it cannot be used to support a secondary application. The State Engineer concludes that Secondary Application 24881-1 cannot be granted as the underlying primary Permit 24881, which supported the secondary application has been abrogated; therefore, no water right exists that can be used to support the secondary application.

**RULING**

Application 24881-1 is hereby denied on the grounds that it would threaten to prove detrimental to the public interest to grant the secondary application as the primary water right is no longer valid.

Respectfully submitted,

  
FOR TRACY TAYLOR, P.E.  
State Engineer

TT/DJL/jm

Dated this 12th day of  
February, 2009.

<sup>4</sup> NRS § 533.370 (5).

<sup>5</sup> NRS §§ 533.325 and 533.440.