

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 48356)
FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF A)
PORTION OF THE PUBLIC WATERS FROM AN)
UNDERGROUND SOURCE HERETOFORE)
APPLIED FOR UNDER APPLICATION 31430)
WITHIN THE RAILROAD VALLEY)
(NORTHERN PART) GROUND WATER BASIN)
IN NYE COUNTY, NEVADA.

RULING

3435

GENERAL

Application 48356 was filed on September 6, 1984, by Stephana J. Lisslow to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore applied for under Application 31430. The proposed use is to irrigate 320 acres of land within the E1/2 NW1/4, W1/2 NE1/4 and SE1/4 Section 27, T.5N., R.54E., M.D.B.&M. The existing place of use is 640 acres of land located within Section 12, T.4N., R.54E., M.D.B.&M., The proposed point of diversion is described as being within the SW1/4 NE1/4 Section 27, T.5N., R.54E., M.D.B.&M. The existing point of diversion is described as being within the NW1/4 NE1/4 Section 12, T.4N., R.54E., M.D.B.&M.¹

Application 48356 was timely protested on February 1, 1985 by Roger Hockersmith on the following grounds:¹

"On or about November 11, 1983, Roger Hockersmith entered into an agreement with the agent of several water applicants to purchase their water applications. Said applications included the underlying applications from whence the herein protested application originated. (Application Nos. 31,424 through 31,438, excluding 31,428 and 31,432)

Hockersmith thereafter was joined by a third party who was to assist in the financing and development of a project conceived by Hockersmith and involving said water applications. Said third party executed a non-disclosure agreement whereby it agreed not to use any proprietary information accumulated by Hockersmith and utilized by him in the creation of the project.

¹ Public records in the office of the State Engineer.

Notwithstanding said non-disclosure agreement, said third party, under the guise of an amendment of said agreement of November 11, 1983, named itself as the purchaser of said water applications; acquired quitclaim deeds for said water applications from the aforesaid agent; and usurped and put into operation Hockersmith's said project for the sole use and benefit of said third party.

Hockersmith informed and believes and therefore alleges that the above named applicant is not a bona-fide purchaser for value and that he, Hockersmith, is the true owner of the protested application.

Hockersmith is contemplating an action to determine ownership and respectfully requests that the State Engineer take no action on the above named application for change of point of diversion and place of use until the true owner of said water application is determined.

FINDINGS

I.

Records and information available to the State Engineer indicate that Application 48356 was filed in support of a Desert Land Entry application.¹

II.

By letter dated October 22, 1986, the United States Department of Interior, Bureau of Land Management, notified the State Engineer that the following Desert Land Entry Application had been closed and the case file is dead.¹

<u>BLM ENTRY NO.</u>	<u>NAME</u>	<u>LAND DESCRIPTION</u>
N-40992	Stephana J. Lissolo	T.5S., R.54E., Sec. 27

III.

The applicant under Application 48356 does not own or control the land described under the place of use of the application.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.²

² NRS Chapters 533 and 534.

II.

Application 48356 was filed in support of a Desert Land Entry. The Desert Land Entry application described under II of Findings has been closed on the records of the Bureau of Land Management, therefore, the applicant does not own or control the land described under the place of use of the application and cannot demonstrate the ability to place the water to beneficial use.

III.

To grant an application to appropriate the public waters for irrigation on lands the applicant does not own or control or where the applicant cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

RULING

Application 48356 is herewith denied on the grounds that to grant the application for irrigation purposes on lands that the applicant does not own or control and cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", is written over a horizontal line. The signature is stylized and cursive.

Peter G. Morros
State Engineer

PGM/SW/bl

Dated this 13th day of
May, 1987.