

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

IN THE MATTER OF APPLICATION 48285)
FILED TO CHANGE THE PLACE OF USE OF)
A PORTION OF THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
PENoyer VALLEY (SAND SPRING VALLEY))
GROUNDWATER BASIN (170), LINCOLN)
COUNTY, NEVADA.)

RULING

4370

GENERAL

I.

Application 48285 was filed on August 9, 1984, by D.C. Day to change the place of use of 2.68 cubic feet per second (c.f.s.), 1,200.0 gallons per minute, a portion of the waters previously appropriated under Permit 19598, Certificate 7303. The proposed place of use is described as being located within the SE $\frac{1}{4}$ of Section 33, T.3S., R.55E., M.D.B.&M.¹ The point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T.3S., R.55E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Certificate 7303 was issued on Permit 19598 on March 12, 1970, for a total of 3.4 c.f.s., not to exceed 1,000.0 acre-feet of water annually.

Permit 36454 was approved on November 14, 1990, to change 0.97 c.f.s., not to exceed 151.0 acre-feet annually, of the water heretofore appropriated under Permit 19598, Certificate 7303.²

Permit 36460 was approved on November 14, 1990, to change 1.99 c.f.s., not to exceed 625.0 acre-feet annually, of the water heretofore appropriated under Permit 19598, Certificate 7303.³

¹File No. 48285, official records of the Office of the State Engineer.

²File No. 36454, official records of the Office of the State Engineer.

³File No. 36460, official records of the Office of the State Engineer.

Permit 41944 was approved on May 17, 1985, to change 0.22 c.f.s., not to exceed 20.92 million gallons annually, of the water heretofore appropriated under Permit 19598, Certificate 7303.⁴

Permit 44229 was approved on November 14, 1990, to change 0.22 c.f.s., not to exceed 159.0 acre-feet annually, of the water heretofore appropriated under Permit 19598, Certificate 7303.⁵

The State Engineer finds that the total amount of water changed from Permit 19598, Certificate 7303 by Permits 36454, 36460, 41944 and 44229 is 3.4 c.f.s. of water, the total amount of water authorized under Permit 19598, Certificate 7303.

CONCLUSIONS

I.

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

II.

NRS 533.345(1) 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 change application, refers to water represented by a water right permit or certificate in good standing.⁷ Where a permit has been totally abrogated by previous change applications, the water right is no longer valid; thus, it is not in good standing and cannot be used to support a change application. The State Engineer concludes that in the case of this change application, the underlying permit no longer has any water left that can be used to support the change application.

⁴File No. 41944, official records of the Office of the State Engineer.

⁵File No. 44229, official records of the Office of the State Engineer.

⁶NRS Chapters 533 and 534.

⁷NRS 533.324.

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁸

1. There is no unappropriated water at the proposed source, or
2. The proposed use conflicts with existing rights, or
3. The proposed use threatens to prove detrimental to the public interest.

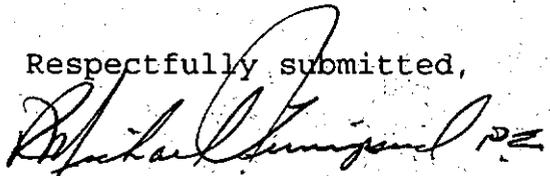
IV.

The State Engineer concludes that Permit 19598, Certificate 7303 was totally abrogated by the granting of Permits 36454, 36460, 41944 and 44229 and, therefore, no existing water right is available to support Change Application 48285.

RULING

Application 48285 is hereby denied on the grounds that no unappropriated water exists under Permit 19598, Certificate 7303 to support the change application.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/RAD/bk

Dated this 8th day of
July, 1996.

⁸NRS 533.370(3).