

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

IN THE MATTER OF CHANGE APPLICATION)
62102 FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE AND MANNER OF USE)
OF THE UNDERGROUND WATERS OF PAHRUMP)
VALLEY GROUNDWATER BASIN (162), NYE)
COUNTY, NEVADA.)

RULING

4583

GENERAL

I.

Application 62102 was filed on May 6, 1996, by Tsunehiro and Ethel S. Matsuda to change the point of diversion, place and manner of use of 0.0471 cubic foot per second, not to exceed 10 acre feet annually, a portion of the underground waters previously appropriated under Permit 55372. The proposed manner of use is for commercial purposes within the N $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T.20S., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 16.¹

FINDINGS OF FACT

I.

The State Engineer finds that by decision letter dated December 16, 1996, Permit 55372 was cancelled for failure of the permittee to comply with the terms of the permit or to show good cause as to why an extension of time to file Proof of Beneficial Use of the water should have been granted.²

II.

The applicants here, Tsunehiro and Ethel S. Matsuda, filed a petition for review of the cancellation of Permit 55372 pursuant to the provisions of NRS § 533.395.¹ The Matsudas had been deeded 0.0471 cubic foot per second, not to exceed 10 acre feet annually, a portion of the waters appropriated under Permit 55372. No petition for review of the cancellation was filed by Mr. Richard

¹ File No. 62102, official records in the office of the State Engineer.

² File No. 55372, official records in the office of the State Engineer.

Aley, the owner of the other portion of Permit 55372. Therefore, the cancellation of the portion owned by Mr. Aley was final. The State Engineer finds that by State Engineer Ruling No. 4579 the cancellation of the Matsuda portion of Permit 55372 was affirmed.³

III.

The State Engineer finds that a permit cannot be granted on change Application 62102 as the base right supporting change Application 62102 has been cancelled; therefore, there is no valid water right that can be changed by the application.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

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.⁵ Where a permit has been cancelled, 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 change Application 62102 the underlying permit has been cancelled; therefore, no water right exists that can be used to support the change application.

³ State Engineer's Ruling No. 4579, dated October 28, 1997, official records in the office of the State Engineer.

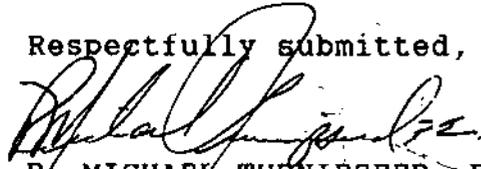
⁴ NRS Chapters 533 and 534.

⁵ NRS § 533.324.

RULING

Application 62102 is hereby denied on the ground that base Permit 55372 is cancelled; thus, no water right exists that can be changed by Application 62102.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/ab

Dated this 13th day of
November, 1997.