

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

IN THE MATTER OF APPLICATION 48116 )  
AND 48139 FILED TO APPROPRIATE THE )  
PUBLIC WATERS FROM FLORENCE CANYON )  
CREEK, WITHIN THE EDWARDS CREEK )  
VALLEY HYDROGRAPHIC BASIN (133), )  
CHURCHILL COUNTY, NEVADA. )

RULING

# 4684

GENERAL

I.

Application 48116 was filed on June 18, 1984, by Marvin Fred Porteous to appropriate 2.5 cubic feet per second (cfs) of water from Florence Canyon Creek for irrigation and domestic purposes within the S $\frac{1}{2}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$  and S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 28 and the N $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 33, T.19N., R.37E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 19, T.19N., R.37E., M.D.B.&M..<sup>1</sup>

II.

Application 48139 was filed on June 27, 1984, by Marvin Fred Porteous to appropriate 5.0 cfs of water from Florence Canyon Creek for irrigation purposes within the S $\frac{1}{2}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$  and the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 28 and the N $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 33, T.19N., R.37E., 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 Section 16, T.19N., R.37E., M.D.B.&M..<sup>2</sup>

<sup>1</sup> File No. 48116, official records in the office of the State Engineer.

<sup>2</sup> File No. 48139, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

By letter dated June 13, 1991, from the United States Bureau of Land Management, Mr. Porteous was informed that his application for a Desert Land Entry, which covered a portion of the place of use under Applications 48116 and 48139, had been rejected. The reason was that the lands were classified as being not suitable for disposal. The State Engineer finds that the applicant does not control portion of the place of use of Applications 48116 and 48139.

II.

The State Engineer notified the applicant by certified letter dated June 2, 1998, requesting that he provide the office of the State Engineer with evidence that he still had an interest in pursuing Applications 48116 and 48139. The applicant was also informed that if a response was not received within 60 days from the date of the letter, the application may be considered for denial. On June 5, 1998, the return receipt signed by Michele Porteous was received at the office of the State Engineer.<sup>1</sup> The State Engineer finds that to date, no information indicating any further interest by the applicant in pursuing Applications 48116 and 48139 has been received in the office of the State Engineer.

III.

The State Engineer finds that the owner of record under Applications 48116 and 48139 was properly noticed of the opportunity to express his continued interest in pursuing said applications, but has failed to do so; therefore, Applications 48116 and 48139 may be considered for denial.

CONCLUSIONS

I.

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

II.

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

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;  
or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

On June 2, 1998, the applicant was requested by the office of the State Engineer to provide information of continued interest that he may have in pursuing Applications 48116 and 48139. The applicant was informed that a failure to respond to the request would represent a lack of interest in this matter and would result in said applications being considered for denial. The applicant failed to provide any indication that he intends to move forward with Applications 48116 and 48139. Therefore, the State Engineer concludes that it would not be in the public interest to approve applications which the applicant no longer intends to pursue.

IV.

The State Engineer concludes that it would not be in the public interest to approve applications to appropriate the public waters for irrigation on lands the applicant does

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<sup>3</sup> NRS § Chapters 533 and 534.

<sup>4</sup> NRS § 533.370(3).

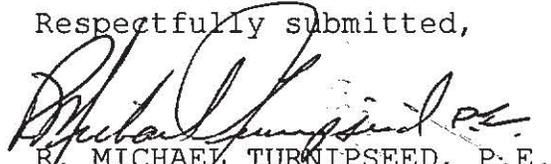
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not own or control or where the applicant cannot demonstrate the ability to place the water to beneficial use.

RULING

Applications 48116 and 48139 are hereby denied on the grounds that granting said applications would not be in the public interest.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MJR/cl

Dated this 8th day of  
December, 1998.