

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

IN THE MATTER OF APPLICATION )  
42768 FILED TO CHANGE THE POINT )  
OF DIVERSION AND MANNER OF USE )  
OF A PORTION OF THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
PREVIOUSLY APPROPRIATED UNDER )  
PERMIT 34826 WITHIN THE TRACY )  
SEGMENT HYDROGRAPHIC BASIN )  
(083), STOREY COUNTY, NEVADA. )

**RULING**

**#5472**

**GENERAL**

**I.**

Application 42768 was filed on November 4, 1980, by the Northern Nevada Racing Association to change the point of diversion and manner of use of 1.66 cubic feet per second (cfs), a portion of the water previously appropriated under Permit 34826, for commercial and domestic purposes within portions of the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , NW $\frac{1}{4}$  SW $\frac{1}{4}$ , and the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 16, T.19N., R.21E., 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.<sup>1</sup>

**II.**

Permit 34826 was issued on September 26, 1979, for Quasi-municipal and domestic purposes. The owner of record is Linda Terry and the Triple M. Cattle Company.<sup>2</sup> The permit terms state that the total combined duty of water under this permit and Permit 34825 shall not exceed 66.0 million gallons annually (mga).

**FINDINGS OF FACT**

**I.**

Records in the State Engineer's office show that Permit 43626 was granted on May 15, 1985, to change 20.0 mga of the water appropriated under Permit 34825. The terms under Permit 43626

---

<sup>1</sup> File No. 42768, official records in the Office of the State Engineer.

<sup>2</sup> File No. 34826, official records in the Office of the State Engineer.

provide that the remaining duty under Permits 34825 and 34826 is 46.0 mga.<sup>3</sup> Records in the State Engineer's office show that Permits 51172 and 51173 were granted on April 12, 1988, to change the 46.0 mga that remained under Permits 34825 and 34826 for a total combined duty of 46.0 mga.<sup>4</sup> The State Engineer finds that the total amount of water removed under the change permits leaves no water remaining under Permit 34826 to support change Application 42768.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this determination.<sup>5</sup>

#### II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:<sup>6</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.

The State Engineer concludes that Permit 34826 is abrogated and there is no water right remaining under Permit 34826 to support the change proposed by Application 42768.

#### IV.

The State Engineer concludes that to grant a permit for Application 42768 when no water right exists under the permit to

---

<sup>3</sup> File No. 43626, official records in the Office of the State Engineer.

<sup>4</sup> File Nos. 51172 and 51173, official records in the Office of the State Engineer.

<sup>5</sup> NRS chapter 533 and 534.

<sup>6</sup> NRS § 533.370(4).

Ruling  
Page 3

support the application would conflict with existing rights and threaten to prove detrimental to the public interest.

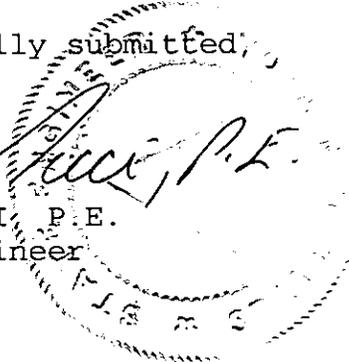
**RULING**

Application 42768 is hereby denied on the grounds that to grant a permit to change an abrogated water right would conflict with existing rights and threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer



HR/KE/jm

Dated this 14th day of  
January, 2005.