

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

IN THE MATTER OF APPLICATION 64578 )  
FILED TO CHANGE THE MANNER OF )  
USE OF THE PUBLIC WATERS OF AN )  
UNDERGROUND SOURCE PREVIOUSLY )  
APPROPRIATED UNDER PERMIT 42678 )  
WITHIN THE BLACK MOUNTAINS AREA )  
HYDROGRAPHIC BASIN (215), CLARK )  
COUNTY, NEVADA. )

**RULING**  
**# 5822**

**GENERAL**

**I.**

Application 64578 was filed on November 2, 1998, by Phyllis E. Thompson to change the manner of use of 0.1515 cubic feet per second of underground water previously appropriated under Permit 42678, Certificate 14933, for quasi-municipal and domestic purposes. The point of diversion is located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 28, T.21S., R.63E., M.D.B.&M. The existing manner and place of use is for mining purposes within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 28, T.21S.,R.63E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

A review of records in the Office of the State Engineer revealed that a prior attempt to change the point of diversion of Permit 42678, Certificate 14933 was made in 1983 under Application 47477. Application 47477 was denied on May 1, 2003, by Ruling No. 5235 as threatening to prove detrimental to public interest on the grounds that the Applicant did not control the place of use and had not acquired the proper permits from the appropriate governmental agency, United States Bureau of Reclamation. The State Engineer finds that the deficiencies identified under Ruling No. 5235 must have been remedied by the Applicant, or Application 64578 is subject to denial.

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<sup>1</sup> File No. 64578, official records in the Office of the State Engineer.

## II.

An additional review of pumping records in the Office of the State Engineer for the base right, Permit 42678, Certificate 14933, indicated that since the beginning of the record in 2001 no water has been pumped through the 2006 season. By letter, dated February 28, 2007, this office sent a 4-year non-use letter to the Applicant. The State Engineer finds the water represented under, Permit 42678, Certificate 14933, has not been placed to its intended beneficial use at its current place of use since 2001.

## III.

Before a water right application can be considered for approval, there must be a reasonable expectation that the water requested for appropriation will be placed to its intended beneficial use after the permit has been issued. The approval of a water right permit is dependent upon several factors, one of which is the surface management status of the land that represents the place of use. The issue of land status is critical, when considering the fact that in excess of 80 percent of the land comprising the State of Nevada is administered by various agencies of the federal government.<sup>2</sup>

The surface management land status map developed by the Bureau of Land Management for public distribution depicts the classification of the state's lands as they relate to their general administration. This map includes the township, range, and section, cited in Application 64578, as its proposed place of use and point of diversion. This area when located upon the land classification map lies within a larger area that has been withdrawn from the public domain.<sup>3</sup> This withdrawal passed control of the land to the United States Bureau of Reclamation under Public Land Order No. 3512, dated December 7, 1964, to provide public land for the Southern Nevada Water Supply Project. The withdrawal of this land places additional restrictions, some of which may preclude the locating of mining claims and the granting of mineral leases. The necessity to adhere the rules and regulations associated with this land classification is addressed by a letter from the Bureau of Reclamation dated August 18, 1997, which is part of the record of correspondence maintained under Permit 47477. This letter states that:

... Currently, we find no valid permit or license for a water diversion, pipeline, or mineral material mining operation.

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<sup>2</sup> Bureau of Land Management Surface Land Management Map, State of Nevada 1:500,000, 1990, distributed by the United States Department of the Interior.

Prior to installation of a diversion, pipeline, or mineral material mining operation, the operator would be required to submit applications to this office. Assuming the water to be diverted is determined to be groundwater, rights-of-use documents would need to be issued for the water diversion and pipeline on Reclamation lands.<sup>3</sup>

If for any reason the Applicant is unable to obtain the required federal permits and licenses, there is no reasonable expectation that the water represented under Application 64578 would be placed to its intended beneficial use.

In September 2006 the Office of the State Engineer contacted the Bureau of Reclamation to determine the Applicant's control of the existing point of diversion and place of use. By letter dated, September 27, 2006, the Bureau of Reclamation responded that:<sup>1</sup>

... Currently, we find no valid permit or license for a water diversion, pipeline, or mineral material mining operation. Ms. Thompson does not have any form of authorization to occupy the subject Reclamation lands.

Prior to any activities on these lands, the applicant would be required to submit an application to this office.

Based upon this information provided by the Bureau of Reclamation, the State Engineer finds that the Applicant has not acquired permission from the proper controlling governmental agency to access and develop the project proposed under Application 64578.

### CONCLUSIONS

#### I.

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

#### II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate water where:<sup>5</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

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<sup>3</sup> File No. 47477, official records in the Office of the State Engineer.

<sup>4</sup> NRS chapter 533.

<sup>5</sup> NRS § 533.370(5).

- 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 change threatens to prove detrimental to the public interest.

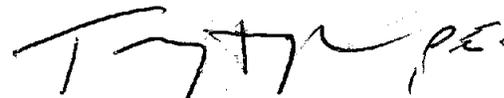
**III.**

Application 64578 proposes to change the manner of use of water on lands that have been withdrawn from public use by the federal government. Any development of the subject lands by the Applicant must occur under a set of federal guidelines that the Applicant has repeatedly failed to meet. This inability or lack of interest to legally access the point of diversion and place of use removes the expectation of a legal beneficial use of the water occurring. Under these circumstances, the State Engineer concludes that the approval of a water right permit to change the manner of use upon a place of use that the Applicant does not control would threaten to prove detrimental to the public interest.

**RULING**

Application 64578 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/WHR/jm

Dated this 17th day of  
March, 2008.