

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

IN THE MATTER OF SECONDARY APPLICATIONS)
24880-1 AND 24882-1 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF THE NORTH FORK HUMBOLDT)
RIVER AND MARYS RIVER WITHIN THE NORTH FORK)
AREA (044) AND MARYS RIVER AREA (042))
HYDROGRAPHIC BASINS, RESPECTIVELY,)
ELKO COUNTY, NEVADA.)

RULING

4803

GENERAL

I.

Application 24880-1 was filed on April 28, 1969, by the Pershing County Water Conservation District as a secondary application under Application 24880 to appropriate 80,000 acre feet annually (afa) of the surface waters of the North Fork of the Humboldt River in the North Fork Area Hydrographic Basin, Elko County, Nevada, for domestic use and the irrigation of 43,809 acres located within the Pershing County Water Conservation District Area. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T.38N., R.57E., M.D.B.&M., Devil's Gate Dam and Reservoir.¹

II.

Application 24882-1 was filed on April 28, 1969, by the Pershing County Water Conservation District as a secondary application under application 24882 to appropriate 50,000 afa of the surface waters of Mary's River in the Marys River Area Valley Hydrographic Basin, Elko County, Nevada, for domestic use and the irrigation of the same acreage as described in Application 24880-1. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T.39N., R.60E., M.D.B.&M., Vista Dam and Reservoir.²

¹File No. 24880-1, official records in the office of the State Engineer.

²File No. 24882-1, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

The underlying primary water rights which support Applications 24880-1 and 24882-1, those being Permit 24880 and Permit 24882, were cancelled by the State Engineer on May 22, 1995, for failure to file Proof of Completion of the works of diversion.³ The State Engineer finds that no appeal was timely filed in regard to the cancellation of Permits 24880 and 24882, therefore, the cancellation of Permits 24880 and 24882 is final. The State Engineer further finds that the cancellation of Permits 24880 and 24882 left no remaining valid primary water right to support Secondary Applications 24880-1 and 24882-1.

CONCLUSIONS

I.

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

II.

Nevada Revised Statute § 533.325 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 secondary application, refers to water represented by a primary storage 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 secondary application. The State Engineer concludes that Secondary Applications 24880-1 and 24882-1 cannot be granted as the underlying primary Permits 24880 and 24882, which supported the secondary applications, respectively have been

³File Nos. 24880 and 24882, official records in the office of the State Engineer.

⁴NRS Chapter 533.

⁵NRS § 533.325 and 533.440.

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cancelled; therefore, no water right exists that can be used to support the secondary applications.

RULING

Application 24880-1 and Application 24882-1 are hereby denied on the grounds that the primary water rights that form the basis for the secondary applications are cancelled; thus, no primary water rights exist to store and supply the sources requested.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/RKM/cl

Dated this 3rd day of
November, 1999.