

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

IN THE MATTER OF APPLICATIONS 58954)
AND 58955 FILED TO CHANGE THE POINT)
OF DIVERSION AND THE PLACE OF USE)
OF THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMITS 41123)
AND 40446 WITHIN THE DAYTON VALLEY)
HYDROGRAPHIC BASIN, (103) LYON)
COUNTY, NEVADA.)

RULING

4929

GENERAL

I.

Application 58954 was filed on June 25, 1993, by Gene S. and Delphine Minor to change the point of diversion and the place of use of 0.09 cubic feet per second (cfs), not to exceed 5.2555 million gallons annually (mga), of underground water previously appropriate under Permit 41123. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T.16N., R.22E., M.D.B.&M. The proposed manner and place of use is for quasi-municipal and domestic purposes within an extensive area that can be found on Attachment "A" of this ruling. The existing place of use is located within the E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T.16N., R.22E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8.¹

II.

Application 58955 was filed on June 25, 1993, by Gene S. and Delphine Minor to change the point of diversion and the place of use of 0.064 cfs, not to exceed 5.2555 mga, of underground water previously appropriated under Permit 40446. The proposed point of diversion and place of use are identical to those described under

¹ File Number 58954, official records in the office of the State Engineer.

Application 58954. The existing place of use is described as being located within the E½ NE¼, E½ SE¼ and the SW¼ SE¼ of Section 8, T.16N., R.22E., M.D.B.&M. The existing point of diversion is described as being located within the NE¼ SE¼ of said Section 8.²

III.

On October 7, 1995, ownership of Applications 58954 and 58955, was assigned by the office of the State Engineer to the County of Lyon.^{1,2}

FINDINGS OF FACT

I.

Applications 58954 and 58955 were filed to change the respective points of diversion and places of use of underground water that was previously appropriated under Permits 41123 and 40446. The right to appropriate water under the permits that form the basis for the change applications was terminated on February 26, 1997, when the State Engineer cancelled Permit 40446 and Permit 41123 due to the permittee's failure to comply with the permit terms. The State Engineer's 1997 cancellation of Permits 40446 and 41123 was not appealed by the permittee within the time allowed by law, therefore, the cancellation is final.³ The State Engineer finds that the right to appropriate water under Permits 40446 and 41123 no longer exists.

II.

Applications 58954 and 58955 were filed to change points of diversion and places of use that were issued under Permits 41123 and 40446, respectively. The right to appropriate water under these permits ended with their cancellation by the State Engineer in 1997. The State Engineer finds that Applications 58954 and 58955 request changes of water rights that no longer exist.

² File Number 58955, official records in the office of the State Engineer.

³ File Numbers 40446 and 41123, official records in the office of the State Engineer. NRS § 533.395(2) allows a permittee a 60-day period to file a petition to review a cancellation at a public hearing. No such petition was filed in regards to Permits 40446 and 41123.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited from granting a permit for an application to change the public waters where:⁵

- a. the proposed use conflicts with existing rights; or
- b. the proposed use threatens to prove detrimental to the public interest.

III.

Applications 58954 and 58955 were filed to change the point of diversion and the place of use of water that was at one time permitted for appropriation under Permits 40446 and 41123. The right to divert underground water under permits that form the basis of the change applications ended when the State Engineer cancelled Permits 40446 and 41123 in 1997. The State Engineer concludes that it would threaten to prove detrimental to the public interest to approve applications that request changes of water rights that no longer exists.

RULING

Applications 58954 and 58955 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 31st day of
May, 2000.

⁴ NRS chapters 533 and 534.
⁵ NRS § 533.370(3).

ATTACHMENT A

Portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 4, T.16N., R.22E., M.D.B.&M.;

Portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$, Section 5, T.16N., R.22E., M.D.B.&M.;

NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$, portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$, portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$, Section 6, T.16N., R.22E., M.D.B.&M.;

Portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, Section 9, T.16N., R.22E., M.D.B.&M.;

NW $\frac{1}{4}$, Section 16, T.16N., R.22E., M.D.B.&M.;

All of Section 17, T.16N., R.22E., M.D.B.&M.;

S $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, Section 18, T.16N., R.22E., M.D.B.&M.;

All of Section 19, T.16N., R.22E., M.D.B.&M.;

NE $\frac{1}{4}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 1, T.16N., R.21E., M.D.B.&M.;

SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 2, T.16N., R.21E., M.D.B.&M.;

All of Section 11, T.16N., R.21E., M.D.B.&M.;

N $\frac{1}{2}$ NW $\frac{1}{4}$, portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$, portion of the NE $\frac{1}{4}$, portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$, Section 12, T.16N., R.21E., M.D.B.&M.;

Portion of the NE $\frac{1}{4}$, SE $\frac{1}{4}$, Section 14, T.16N., R.21E., M.D.B.&M.;

SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, NE $\frac{1}{4}$, Section 23, T.16N., R.21E., M.D.B.&M.;

N $\frac{1}{2}$, Section 24, T.16N., R.21E., M.D.B.&M.;

Portion of the NW $\frac{1}{4}$, Section 26, T.16N., R.21E., M.D.B.&M.;

W $\frac{1}{2}$ SE $\frac{1}{4}$, portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$; portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, Section 27, T.16N., R.21E., M.D.B.&M.;

E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, Section 28, T.16N., R.21E., M.D.B.&M.;

NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, Section 33, T.16N., R.21E., M.D.B.&M.;

N $\frac{1}{2}$ NW $\frac{1}{4}$, Section 34, T.16N., R.21E., M.D.B.&M.;

SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 36, T.17N., R.21E., M.D.B.&M.;

S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$, Section 31, T.17N., R.22E., M.D.B.&M.