

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

IN THE MATTER OF APPLICATION 55981 )  
FILED TO CHANGE THE PLACE OF USE OF )  
THE UNDERGROUND WATER PREVIOUSLY )  
APPROPRIATED UNDER APPLICATION )  
46232 WITHIN THE BIG SMOKEY VALLEY )  
HYDROGRAPHIC BASIN - NORTHERN PART )  
(137B), NYE COUNTY, NEVADA. )

RULING

**# 5203**

GENERAL

I.

Application 55981 was filed on March 13, 1991, by Lawrence A. Bell to change the place of use of 6.0 cubic feet per second, of the underground water previously requested for appropriation under Application 46232. The proposed manner and place of use is for irrigation purposes within the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , S $\frac{1}{2}$  SW $\frac{1}{4}$ , W $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 2; W $\frac{1}{2}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 11; all within T.10N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 2.<sup>1</sup>

FINDINGS OF FACT

I.

Application 55981 requests a change in the place of use of the underground water previously requested for appropriation under Application 46232. This earlier application, which would represent the permit that forms the basis for change under Application 55981, was denied on September 21, 1998 by State Engineer's Ruling No. 4663.<sup>2</sup> The State Engineer finds that the denial of Application 46232 removed the water right application targeted for change under Application 55981.

<sup>1</sup> File No. 55981, official records in the Office of the State Engineer.

<sup>2</sup> File No. 46232, official records in the Office of the State Engineer.

**II.**

Nevada Revised Statute § 533.325 provides that an application can be filed to change the point of diversion, place of use or manner of use of water already appropriated. Water already appropriated, in reference to a change application, refers to water represented by a water right in good standing.<sup>3</sup> Where a water right application has been denied, and no permit issued, the water right no longer exists and cannot be used to support a change application. The State Engineer finds that Application 46232 cannot be used to support the change proposed under Application 55981.

**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 change application to appropriate the public waters where:<sup>5</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.**

Application 55981 proposes to change a water right application that was previously denied by the State Engineer. The State Engineer concludes that it would threaten to prove detrimental to the public interest to approve a change of a water

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<sup>3</sup> NRS § 533.324.

<sup>4</sup> NRS chapters 533 and 534.

<sup>5</sup> NRS § 533.370(3).

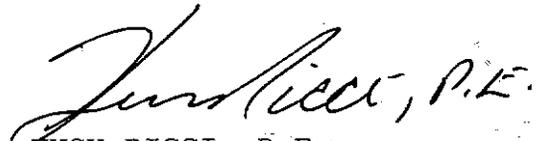
Ruling  
Page 3

right application which is no longer considered to be in good standing.

**RULING**

Application 55981 is hereby denied on the grounds that the water right application it seeks to change is no longer in good standing.

Respectfully submitted,

  
HUGH RICCI, P.E.  
State Engineer

HR/BM/jm

Dated this 6th day of  
February, 2003.