

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

IN THE MATTER OF APPLICATION)
56650 FILED TO CHANGE THE PLACE)
AND MANNER OF USE OF THE WATER)
FROM AN UNNAMED SPRING PREVIOUSLY)
APPROPRIATED UNDER PERMIT 43206)
WITHIN THE BIG SMOKEY VALLEY)
(NORTHERN PART) HYDROGRAPHIC)
BASIN (137B), NYE COUNTY, NEVADA.)

RULING

5246

GENERAL

I.

Application 56650 was filed on August 6, 1991, by Karl W. Berg to change the place and manner of use of 0.004 cubic feet per second of water previously appropriated from an unnamed spring under Permit 43206 for stockwater use within the NW¹/₄ NW¹/₄ of Section 33, T.14N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located in the NW¹/₄ NW¹/₄ of Section 33, T.14N., R.43E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Application 56650 requests a change in the place and manner of use of the water from an unnamed spring previously appropriated under Permit 43206. The State Engineer finds Permit 43206 was cancelled on April 29, 1992, for failure to comply with the terms of the permit.²

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

¹ File No. 56650, official records in the Office of the State Engineer.

² File No. 43206, official records in the Office of the State Engineer.

appropriated, in reference to a change application, refers to water represented by a water right in good standing.³ Where a water right permit has been cancelled, the water right no longer exists and cannot be used to support a change application. The State Engineer finds that Permit 43206 cannot be used to support the change proposed under Application 56650.

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 by law from granting a change application to appropriate the public waters where:⁵

- 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 56650 proposes to change a water right permit that was previously cancelled by the State Engineer. Therefore, the permit that forms the basis to support the change application is no longer in good standing and cannot be changed by Application 56650. The State Engineer concludes Application 56650 must be denied.

³ NRS § 533.324.

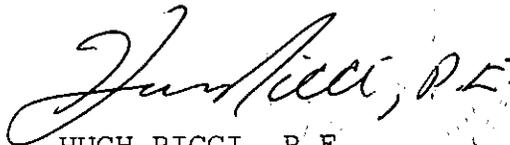
⁴ NRS chapter 533.

⁵ NRS § 533.370(3).

RULING

Application 56650 is hereby denied on the grounds that no water right exists that can be changed; therefore, granting a permit under this application would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/BM/jm

Dated this 19th day of
May, 2003.