

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

IN THE MATTER OF APPLICATION 16484)
FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF THE)
PUBLIC WATERS OF DEEP CREEK)
PREVIOUSLY APPROPRIATED UNDER)
PERMIT 2839, CERTIFICATE 569, WITHIN)
THE OWYHEE RIVER AREA)
HYDROGRAPHIC BASIN (37), ELKO)
COUNTY, NEVADA.

RULING
5250

GENERAL

I.

Application 16484 was filed on May 18, 1955, by William E. Duffin and Stella Vincent to change the point of diversion and place of use of 1.396 cubic feet per second (cfs) of water heretofore appropriated under Permit 2839, Certificate 569. The proposed place of use is described as being located within portions of the SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T.43N., R.55E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.43N., R.54E., M.D.B.&M.¹

II.

Certificate 569 was issued under Permit 2839 on January 18, 1922, for 1.396 cfs for irrigation purposes. The source of water is from Deep Creek. The place of use is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, all within T.43N., R.55E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T.43N., R.55E., M.D.B.&M.²

III.

Application 16484 was timely protested by the USA Nevada Indian Agency on the following grounds:¹

¹ File No. 16484, official records in the Office of the State Engineer.

² File No. 16484, official records in the Office of the State Engineer.

The United States of America is the owner of the following described land:
All of Section 5; E $\frac{1}{2}$ NE $\frac{1}{4}$; SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ Section 6, T. 43N. R. 55E. of the Mt. Diablo Meridian, from which applicant proposes to transfer water right owned by the United States under permit #2839, Certificate #569 – Certified copy of Deed of Manuel Aguirre to the United States for above was filed in State Engineers Office.

The United States of America Nevada Indian Agency requested that Application 16484 be denied.

FINDINGS OF FACT

I.

Permit 2839, Certificate 569 is currently held in the ownership of the United States of America (Indian Service). Application 16484 was filed in the name of William E. Duffin and Stella Vincent. A deed was submitted on February 2, 1956, that transferred ownership of Application 16484 to John G. Butcher et ux and Edmund R. English et ux. The State Engineer shall not consider a change application for approval unless the owner of the change application can demonstrate title to the permit that forms the basis for the change application. A review of the records in the Office of the State Engineer show that the owners of change Application 16484 have not submitted any evidence demonstrating title to Certificate 569, which forms the basis for change Application 16484. The State Engineer finds that Permit 2839, Certificate 569 is in different ownership than change Application 16484.

II.

The State Engineer finds that the applicants have had at least 46 years to submit proof of ownership of Permit 2839, Certificate 569, the water right that forms the basis for change Application 16484. The State Engineer further finds that it is the responsibility of the applicants to show proof of ownership of Permit 2839, Certificate 569.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.³

³ NRS chapter 533.

II.

The State Engineer is prohibited by law from granting a permit for an application to change the public waters where:⁴

- 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.

The State Engineer concludes that to approve an application to change a water right that is not in the name of the applicants would threaten to prove detrimental to the public interest.

RULING

Application 16484 is hereby denied on the grounds that to issue this permit would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 3rd day of
June, 2003.

⁴ NRS § 533.370(3).