

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

IN THE MATTER OF APPLICATIONS 68144,)
68145, 68146, 68147 AND 68148 FILED TO)
CHANGE THE PLACE OF USE AND)
MANNER OF USE OF THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
HERETOFORE APPROPRIATED UNDER)
PERMITS 45770, 48642, 48643 AND 59614)
WITHIN THE KELLY CREEK AREA)
HYDROGRAPHIC BASIN (66), HUMBOLDT)
COUNTY, NEVADA.)

RULING
#5528

GENERAL

I.

Application 68144 was filed on October 25, 2001, by the Gene and Jo Christison Family Trust to change the place of use and manner of use of 0.29 cubic feet per second (cfs) of underground water previously appropriated under Permit 45770, Certificate 13073. Application 68144 proposes to change the existing manner of use from mining, milling and domestic purposes to irrigation purposes. The proposed place of use is described as being located within a portion of Section 16, T.36N., R.41E., M.D.B.&M. The existing place of use is described as being located in Sections 17 and 18, T.36N., R.41E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 17, T.36N., R.41E., M.D.B.&M.¹

II.

Application 68145 was filed on October 25, 2001, by the Gene and Jo Christison Family Trust to change the place of use and manner of use of 0.51 cfs of underground water previously appropriated under Permit 48642, Certificate 13077. Application 68145 proposes to change the existing manner of use from mining, milling and domestic purposes to irrigation purposes. The proposed place of use is described as being located within a portion of Section 16, T.36N., R.41E., M.D.B.&M. The existing place of use is described as being located in Sections 17 and 18, T.36N., R.41E., M.D.B.&M. The

¹ File No. 68144, official records in the Office of the State Engineer.

proposed point of diversion is described as being located within the SE¼ SE¼ of Section 17, T.36N., R.41E., M.D.B.&M.²

III.

Application 68146 was filed on October 25, 2001, by the Gene and Jo Christison Family Trust to change the place of use and manner of use of 0.0155 cfs, a portion of the underground water previously appropriated under Permit 48643, Certificate 13078. Application 68146 proposes to change the existing manner of use from mining, milling and domestic purposes to stockwatering purposes. The proposed place of use is described as being located within the N½ S½ of Section 9, T.36N., R.41E., M.D.B.&M. The existing place of use is described as being located in Sections 17 and 18, T.36N., R.41E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 8, T.36N., R.41E., M.D.B.&M.³

IV.

Application 68147 was filed on October 25, 2001, by the Gene and Jo Christison Family Trust to change the place of use and manner of use of 0.6545 cfs, a portion of the underground water previously appropriated under Permit 48643, Certificate 13078. Application 68147 proposes to change the existing manner of use from mining, milling and domestic purposes to irrigation purposes. The proposed place of use is described as being located within Section 16, T.36N., R.41E., M.D.B.&M. The existing place of use is described as being located in Sections 17 and 18, T.36N., R.41E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 8, T.36N., R.41E., M.D.B.&M.⁴

V.

Application 68148 was filed on October 25, 2001, by the Gene and Jo Christison Family Trust to change the place of use and manner of use of 0.67 cfs of underground water previously appropriated under Permit 59614. Application 68148 proposes to change the existing manner of use from mining, milling and domestic purposes to irrigation purposes. The proposed place of use is described as being located within Section 16, T.36N., R.41E., M.D.B.&M. The existing place of use is described as being located in Sections 17 and 18, T.36N., R.41E., M.D.B.&M. The point of diversion is

² File No. 68145, official records in the Office of the State Engineer.

³ File No. 68146, official records in the Office of the State Engineer.

⁴ File No. 68147, official records in the Office of the State Engineer.

described as being located within the SE¼ SE¼ of Section 8, T.36N., R.41E., M.D.B.&M.⁵

VI.

The applications were timely protested by the United States Bureau of Land Management (BLM) on the following grounds:^{1,2,3,4,5}

Applications #68144, #68145, #68146, #68147, and #68148, filed by the Gene & Jo Christison Family Trust, are located on public land managed by the Winnemucca Field Office of the Bureau of Land Management (BLM). The applications seek to change the manner and place of use of the base water rights that are associated with the Preble Mine.

The BLM is aware that the Pinson Mining Company (PMC), as operators of the Preble Mine and the Christison Family Trust have entered into an agreement for the transfer of the water rights and ownership of the appurtenances associated with the points of diversion. At this time the BLM is filing a conditional protest seeking to hold these applications in abeyance until such time that all issues involving the points of diversion (PODs) are resolved.

The PODs are the production wells that were used during the operation of the Preble Mine. The wells are located on public land and are a part of Preble's Plan of Operations. The Plan of Operations serves as the authorizing instrument for the wells existence on public land. As part of the Plan of Operations, the subject wells are scheduled for surface reclamation and plugging/abandonment in accordance with the State of Nevada's regulations. The reclamation of these facilities is currently the responsibility of PMC.

PMC is in the process of securing a Right of Way for the facilities in question. Once secured, PMC will be able to transfer the Right of Way, along with their responsibility for reclamation to the Christison Family Trust. The BLM's interest in this process is to ensure that there is a responsible party liable for the reclamation of these facilities and that a property right should not be transferred until such time that the responsibility for reclamation has been accepted.

FINDINGS OF FACT

I.

Nevada Revised Statutes § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the

⁵ File No. 68148, official records in the Office of the State Engineer.

State of Nevada. The State Engineer finds that sufficient evidence is available in the Office of the State Engineer to evaluate the merits of Applications 68144, 68145, 68146, 68147 and 68148; therefore, a hearing on this matter is not necessary.

II.

By letter dated April 1, 2003, the applicant and its agent were requested to submit additional information to the Office of the State Engineer regarding Applications 68144, 68145, 68146, 68147 and 68148. There is no record on file of any response to this letter. Subsequently, the applicant and agent were notified by certified mail dated February 22, 2005, that before further consideration could be given to the applications additional information must be submitted to the Office of the State Engineer. The applicant was warned that failure to respond within 30 days would result in denial of the applications. Endorsed certified mail receipts were received from the applicant and its agent. To date, no additional information has been received in the Office of the State Engineer regarding this matter.^{1,2,3,4,5}

The State Engineer finds that the applicant and its agent have been properly noticed at their address of record of the need to provide additional information regarding Applications 68144, 68145, 68146, 68147 and 68148 and have failed to do so; therefore, the applications can be considered for denial.

III.

The protest by the BLM requests that the applications be held in abeyance until such time as responsibility for plugging/abandonment of the subject wells is transferred from the Pinson Mining Company to the applicant. The applications were filed over 4 years ago and the last correspondence from the applicant's agent was also over 4 years ago. The applicant and agent have failed to respond to two separate letters from the Office of the State Engineer and have failed to supply any additional information regarding the applications.

The State Engineer finds that sufficient time has past for the applicant to resolve any outstanding issues regarding responsibility for the subject wells.

IV.

Applications 68144, 68145, 68146, 68147 and 68148 were filed to change water previously appropriated by the Pinson Mining Company for mining related purposes under Permits 45770, 48642, 48643 and 59614. It should be noted that Permit 59614 is a change application of Permit 49502. An examination of the original mining permits (Permit Nos. 45770, 48642, 48643 and 49502 (59614)) show that they were issued with the following permit term:⁶

This permit is issued under the preferred use provisions of NRS Chapter 534. The manner of use of water under this permit is by nature of its activity a temporary use and any application to change the manner of use granted under this permit will be subject to additional determination and evaluation with respect to the permanent effects on existing rights and the resource within the ground water basin.

Every water right permit that is issued by the Office of the State Engineer comes with a set of conditions that must be adhered to by the permittee or any successor in interest. The permit terms, under which Permits 45770, 48642, 48643 and 49502 (59614) were issued, clearly indicate that the use of this water was to be temporary. It was not the intention of the State Engineer to issue permits that would be changed at a later date to a permanent consumptive use of water in the groundwater basin. State Engineer's Order No. 536, issued May 9, 1975, underscores this fact as the order was issued to designate the Kelly Creek Area as a groundwater basin in need of additional administration.⁷ The issuance of this order predates the earliest mining permit, Permit 45770, by over 7 years.

The State Engineer finds that, under the policy created by Order No. 536 and by the terms of the permits that form the basis for the change applications, the change in manner of use requested under Applications 68144, 68145, 68146, 68147 and 68148 cannot be approved.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

⁶ File Nos. 45770, 48642, 48643 and 49502, official records in the Office of the State Engineer.

⁷ State Engineer's Order No. 536, official records in the Office of the State Engineer.

⁸ NRS chapters 533 and 534.

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.⁹

III.

The State Engineer is prohibited by law from granting a permit under an application to change the public water 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.

IV.

The applicant and its agent were properly notified of the requirement for additional information regarding the applications and have failed to submit the information to the State Engineer's office. The State Engineer concludes that the failure to submit the requested information and the failure to express any interest in these applications over the last 4 years demonstrates the applicant's lack of interest in pursuing Applications 68144, 68145, 68146, 68147 and 68148. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

V.

Applications 68144, 68145, 68146, 68147 and 68148 were filed to change the manner of use and place of use of water previously appropriated as a temporary withdrawal of ground water for mining, milling and domestic purposes under Permits 45770, 48642, 48643 and 49502 (59614). The State Engineer concludes that the proposed change in manner of use from a temporary use to a permanent use would threaten to prove detrimental to the public interest. The State Engineer concludes to issue permits under applications for which the applicant has not expressed an interest in pursuing would threaten to prove detrimental to the public interest.

⁹ NRS § 533.375.

⁴ NRS § 533.370(4).

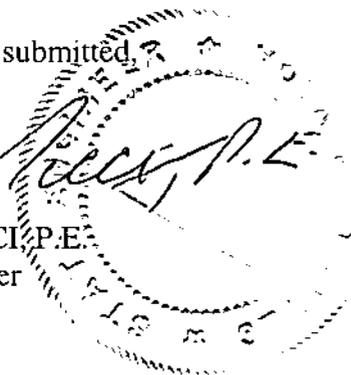
RULING

Applications 68144, 68145, 68146, 68147 and 68148 are hereby denied on the grounds their issuance 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 19th day of

September, 2005.