

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

IN THE MATTER OF APPLICATION 72690)
FILED TO CHANGE THE POINT OF DIVERSION)
OF THE PUBLIC WATERS OF AN UNDERGROUND)
SOURCE PREVIOUSLY APPROPRIATED UNDER)
PERMIT 66633 WITHIN THE PAHRUMP VALLEY)
HYDROGRAPHIC BASIN (162), NYE COUNTY,)
NEVADA.)

RULING

5682

GENERAL

I.

Application 72690 was filed on April 29, 2005, by Sean Michael Morris to change the point of diversion of 2.02 acre-feet annually of the underground waters of the Pahrump Valley Hydrographic Basin previously appropriated under Permit 66633. The proposed manner of use is for commercial purposes within a portion of the SW¼ of Section 34, T.19S., R.53E., M.D.B.&M. The proposed point of diversion is described as being located in the SE¼ NW¼ of said Section 34.¹

FINDINGS OF FACT

I.

Permittee, Sean Michael Morris, was noticed by certified mail dated April 6, 2004, that proof of completion of works had been due to be filed under Permit 66633 on or before April 2, 2004. The notice gave the Permittee 30 days from the date of the final notice to either file the required proof or request an extension of time for good cause shown for filing the required proof, and informed the Permittee that failure to timely file either the required proof or a request for extension of time would result in cancellation of the water right. The certified notice to the permit holder was returned by the United States Postal Service with a forwarding address in Rancho Cucamonga, California. The certified notice of filing deadline was resent by certified mail on April 20, 2004. This notice was returned by the United States Postal Service as "unclaimed." The State Engineer then sent the notice of filing deadline by regular mail to the address in Rancho

¹ File No. 72690, official records in the Office of the State Engineer.

Cucamonga, California, and that notice was returned by the United States Postal Service with an indication of "box closed, unable to forward." The State Engineer also served Permittee Sean Michael Morris's agent with notice of the filing deadline. The first notice to the agent was returned by the United States Postal Service with a forwarding address. The State Engineer resent the notice to the Permittee's agent and the records of the Office of the State Engineer indicate that the agent signed for the notice on April 24, 2004.

The State Engineer again on June 8, 2004, sent notice by certified mail to the Permittee of the required filing of proof of completion and gave the Permittee an additional 30 days from that notice for either filing the required proof or filing for an extension of time. This notice was returned by the United States Postal Service as "unclaimed."

The State Engineer finds that Permit 66633 was cancelled on April 21, 2005; therefore, Application 72690 was filed to change a water right that does not exist due to the fact that it has been cancelled. The State Engineer finds that Application 72690 cannot be approved because the water right that it seeks to change no longer exists.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:³

- 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

² NRS chapters 533 and 534.

³ NRS § 533.370(5).

- 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.

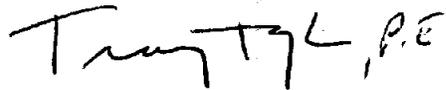
III.

Nevada Revised Statute 533.325 provides that an application can be filed to change the point of diversion, manner or place of use of water already appropriated. Water already appropriated refers to water represented by a permit or certificate in good standing.⁴ The State Engineer concludes that where a water right permit has been cancelled the water right is no longer valid; thus, it is not in good standing and cannot be used to support a change application. Therefore, Application 72690 is subject to denial.

RULING

Application 72690 is hereby denied on the grounds that the water right that forms the basis for the change application is cancelled and is no longer an active water right available to be changed, and to grant a permit to change a cancelled water right would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/SJT/jm

Dated this 5th day of
December, 2006.

⁴ NRS § 533.324.