

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

IN THE MATTER OF APPLICATION 74307 FILED)
TO CHANGE THE POINT OF DIVERSION AND)
THE MANNER OF USE OF A PORTION OF THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE PREVIOUSLY APPROPRIATED UNDER)
PERMIT 17657-A01, CERTIFICATE 6978, WITHIN)
THE AMARGOSA DESERT HYDROGRAPHIC)
BASIN (230), NYE COUNTY, NEVADA.)

RULING

#6172

I.

Application 74307 was filed on May 17, 2006, by Larry &/or June K. Williams, later assigned to LCF Horticulture, LLC, to change the point of diversion and the manner of use of 0.0707 cubic feet per second, not to exceed 20.0 acre-feet annually, which represents a portion of the underground water previously permitted for appropriation under Permit 17657-A01, Certificate 6978. The proposed manner of use is described as being for commercial purposes within the S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.16S., R.48E., M.D.B.&M. The existing manner of use and point of diversion issued under Permit 17657-A01, Certificate 6978 is for irrigation and domestic purposes from an agricultural well located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.16S., R.48E., M.D.B.&M. If a permit is issued under this application, it would transfer the existing point of diversion, to a new residential well located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.16S., R.48E., M.D.B.&M.¹

II.

Application 74307 was timely protested by the United States Department of the Interior, National Park Service on grounds that will not be considered in this ruling.¹

FINDINGS OF FACT

I.

The existing place of use described under Application 74307 is represented by Nye County Parcel #019-551-21, which is one of the numerous residential properties that comprise the Dansby Subdivision. Prior to its creation, the land occupied by the

¹ File No. 74307, official records in the Office of the State Engineer.

subdivision consisted of a large agricultural field that was irrigated by a single well constructed under Permit 17657-A01, Certificate 6978. The gradual transformation of this place of use from agricultural to quasi-municipal use, was accompanied by a shift in water use from the main irrigation well to individual domestic wells that had been constructed on the new residential parcels.

To legitimize this use, the State Engineer, during the 1990s instructed the lot owners to file change applications to transfer their respective portions of Permit 17657-A01, Certificate 6978 into their individual domestic wells. To comply with these instructions, the owners of Nye County Parcel APN #019-551-21 filed Application 60467, which was ultimately approved by the State Engineer on August 30, 1996. Permit 60467 was issued with the condition that the Proof of Completion would be filed on or before March 2, 1997. The record maintained under this water right indicates that the permittees failed to meet this deadline leading to the cancellation of Permit 60467 on May 5, 1997.

Once a change application is approved, the water issued under the change permit is severed from its immediate base right and the beneficial use process begins under the new permit. In the event that the change permit is cancelled or withdrawn, the right to use the underground water issued under the change permit does not "fall back" to its immediate base right permit, rather it returns to the groundwater basin.

At the time of the filing of Application 60467, the Summary of Ownership created under Permit 17657-A01, Certificate 6978, identified Larry and June K. Williams as owners of three separate portions of this permit. Each of these portions was subsequently transferred to lots within the Dansby Subdivision, through the approval of change applications. As each transfer was approved, its associated annual duty of water was severed from Permit 17657-A01, Certificate 6978, until a point was reached where the Williams portions of Permit 17657-A01, Certificate 6978 were totally abrogated. The State Engineer finds that the Applicants no longer own a portion of Permit 17657-A01, Certificate 6978 that can be considered for transfer under Application 74307.

CONCLUSIONS

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 an application that requests a transfer of an existing water right 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 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.

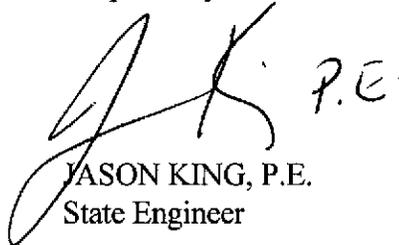
III.

Application 74307 requests a change of a portion of an existing groundwater permit that no longer exists. The State Engineer concludes the approval of Application 74307 would threaten to prove detrimental to the public interest.

RULING

Application 74307 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully Submitted,


JASON KING, P.E.
State Engineer

Dated this 30th day of
April, 2012.

² NRS Chapters 533 and 534.

³ NRS § 533.370(2).