

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

IN THE MATTER OF APPLICATIONS 83518)
AND 83519 FILED TO CHANGE THE)
MANNER OF USE OF THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE WITHIN)
THE PAHRUMP VALLEY HYDROGRAPHIC)
BASIN (162), NYE COUNTY, NEVADA.)

RULING

#6296

GENERAL

I.

Application 83518 was filed on February 6, 2014, by Western Best Ltd., to change the manner of use of 4.0 acre-feet annually (afa) of water previously appropriated under Permit 73070. The existing manner of use is for irrigation and domestic purposes and the proposed manner of use is for quasi municipal purposes. The proposed point of diversion is unchanged and is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.21S., R.54E., M.D.B.&M. The proposed place of use is unchanged and is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.21S., R.54E., M.D.B.&M.¹

II.

Application 83519 was filed on February 6, 2014, by Western Best Ltd., to change the manner of use of 4.0 afa of water previously appropriated under Permit 73071. The existing manner of use is for irrigation purposes and the proposed manner of use is for quasi municipal purposes. The proposed point of diversion is unchanged and is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.21S., R.54E., M.D.B.&M. The proposed place of use is unchanged and is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, all within T.21S., R.54E., M.D.B.&M.²

FINDINGS OF FACT

I.

Permits 73070 and 73071, which form the basis for the change applications (Base Rights), were irrigation rights issued to the Applicant on September 13, 2007. Between 2008 and 2012 the Applicant requested, and received, extensions of time to file the Proofs of Completion of Work and Proofs of Beneficial Use on the Base Rights. In 2013, the Applicant filed additional Applications

¹ File No. 83518, official records in the Office of the State Engineer.

² File No. 83519, official records in the Office of the State Engineer.

for Extensions of Time for Proofs of Completion of Work and Proofs of Beneficial Use concerning the Base Rights.

In response to the applications for extensions of time, the State Engineer requested information from the Applicant to demonstrate that the Applicant was proceeding in good faith with reasonable diligence toward perfecting the water rights as irrigation rights. The Applicant provided a response that acknowledged there was no irrigation project, that the Applicant had been pursuing construction of a residential subdivision project and that the Applicant intended to file applications to change the manner of use.

After considering the Applicant's response, the State Engineer determined that the Applicant was not proceeding in good faith with reasonable diligence to perfect the irrigation rights and denied the extensions of time pursuant to NRS § 533.380. Consequently, the Base Rights were cancelled pursuant to NRS § 533.395 as the State Engineer determined that the Applicant was not proceeding in good faith with reasonable diligence.

The Applicant petitioned for review of the cancelled Base Rights and an administrative hearing was held on August 4, 2014. After the hearing, the State Engineer affirmed the cancellation of the Base Rights in Ruling No. 6294.³ The State Engineer finds the Base Rights, Permits 73070 and 73071, were cancelled effective December 17, 2013, and the cancellation was affirmed by Ruling No. 6294.

II.

Permitted water rights which are cancelled pursuant to NRS § 533.395 revert to the source and are available for further appropriation. *Desert Irr. v. Nev.*, 113 Nev. 1049, 944 P.2d 835, 843 (1997). In affirming the cancellation of Permits 73070 and 73071 after the administrative hearing, the State Engineer finds that the water rights existing under these permits have reverted to the state absolutely. Consequently, the State Engineer further finds that the water rights that form the basis for change, no longer exist to be changed by Applications 83518 and 83519; therefore, the change applications are subject to denial.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

³ Ruling No. 6294, dated October 20, 2014, official records in the Office of the State Engineer.

⁴ NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests 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 protectable 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.

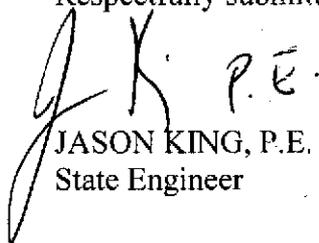
III.

A water right application may be filed to change the point of diversion, place or manner of use of water already appropriated.⁶ Water already appropriated, in reference to a change application, refers to a water right in good standing.⁷ Once Applications 73070 and 73071 were cancelled, they no longer exist to be changed by Applications 83518 and 83519. The State Engineer concludes it would threaten to prove detrimental to the public interest to grant change applications when the permits that supported the changes have been cancelled.

RULING

Applications 83518 and 83519 are hereby denied on the grounds that the water rights that form the basis for the proposed changes no longer exist and cannot be used to support the change applications, and therefore, would threaten to prove detrimental to the public interest.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 29th day of
October, 2014.

⁵ NRS § 533.370(2).

⁶ NRS § 533.325.

⁷ NRS § 533.324.