

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 48346, )  
48358 AND 48359 FILED TO CHANGE THE )  
POINT OF DIVERSION AND PLACE OF USE )  
OF A PORTION OF THE PUBLIC WATERS )  
FROM AN UNDERGROUND SOURCE )  
HERETOFORE APPROPRIATED UNDER )  
APPLICATIONS 31424 AND 31431 WITHIN THE )  
RAILROAD VALLEY (NORTHERN PART) )  
GROUND WATER BASIN IN NYE COUNTY, )  
NEVADA. )

RULING 3419

GENERAL

Application 48346 was filed on September 6, 1984, by Robert E. Connealy to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore applied for under Application 31424 for irrigation and domestic purposes. The proposed place of use is within the S1/2 Section 36, T.5N., R.54E., M.D.B.&M. The existing place of use is within Section 36, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 36, T.5N., R.54E., M.D.B.&M. The existing point of diversion is described as being within the NW1/4 NE1/4 Section 36, T.5N., R.54E., M.D.B.&M.<sup>1</sup>

Application 48358 was filed on September 6, 1984, by Russell C. Koehler to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore applied for under Application 31431 for irrigation and domestic purposes. The proposed place of use is within the S1/2 N1/2 and N1/2 S1/2 Section 26, T.4N., R.53E., M.D.B.&M. The existing place of use is within Section 24, T.4N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the SE1/4 NW1/4 Section 26, T.4N., R.53E., M.D.B.&M. The existing point of diversion is described as being within the NW1/4 NE1/4 Section 24, T.4N., R.54E., M.D.B.&M.<sup>1</sup>

Application 48359 was filed on September 6, 1984, by Jean Ann Koehler to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore applied for under Application 31431 for irrigation and domestic purposes. The proposed place of use is within the S1/2 S1/2 Section 26 and N1/2 N1/2 Section 35, T.4N., R.53E., M.D.B.&M. The existing place of use is within Section 24, T.4N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the SE1/4 SW1/4 Section 26, T.4N., R.53E., M.D.B.&M. The existing point of diversion is described as being within the NW1/4 NE1/4 Section 24, T.4N., R.54E., M.D.B.&M.<sup>1</sup>

A timely protest to the granting of Applications 48346, 48358 and 48359 was filed on February 1, 1985, by Roger Hockersmith. The grounds of the protest are as follows:<sup>1</sup>

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<sup>1</sup> Public records in the office of the State Engineer.

"On or about November 11, 1983, Roger Hockersmith entered into an agreement with the agent of several water applicants to purchase their water applications. Said applications included the underlying applications from whence the herein protested application originated (Application No.s 31,424 through 31,438, excluding 31,428 and 31,432)

Hockersmith thereafter was joined by a third party who was to assist in the financing and development of a project conceived by Hockersmith and involving said water applications. Said third party executed a non-disclosure agreement whereby it agreed not to use any proprietary information accumulated by Hockersmith and utilized by him in the creation of the project.

Notwithstanding said non-disclosure agreement, said third party, under the guise of an amendment of said agreement of November 11, 1983, named itself as the purchaser of said water applications; acquired quitclaim deeds for said water applications from the aforesaid agent; and usurped and put into operation Hockersmith's said project for the sole use and benefit of said third party.

Hockersmith is informed and believes and therefore alleges that the above named applicant is not a bona-fide purchaser for value and that he, Hockersmith, is the true owner of the protested application.

Hockersmith is contemplating an action to determine ownership and respectfully requests that the State Engineer take no action on the above named application for change of point of diversion and place of use until the true owner of said water application is determined."

### FINDINGS

#### I.

Records and information available to the State Engineer indicate that Applications 48346, 48358 and 48359 were filed in support of Desert Land Entry applications.<sup>1</sup>

#### II.

By letter dated February 25, 1986, the United States Department of Interior, Bureau of Land Management, notified the State Engineer that the following Desert Land Entry applications had been closed and the case files are dead.<sup>1</sup>

<u>BLM ENTRY NO.</u>	<u>NAME</u>	<u>LAND DESCRIPTION</u>
N-40278	Robert E. Connealy	T.5N., R.54E., Sec. 36
N-40265	Russell C. Koehler	T.4N., R.53E., Sec. 26
N-40266	Jean Ann Koehler	T.4N., R.53E., Secs. 26, 35

#### III.

The applicants under Applications 48346, 48358 and 48359 do not own or control the land described under the place of use of the applications.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.<sup>2</sup>

II.

Applications 48346, 48358 and 48359 were filed in support of Desert Land Entries. The Desert Land Entry applications described under II of Findings have been closed on the records of the Bureau of Land Management, therefore, the applicants do not own or control the land described under the place of use of the applications and cannot demonstrate the ability to place the water to beneficial use.

III.

To grant applications to appropriate the public waters for irrigation on lands the applicant does not own or control or where the applicant cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

RULING

Applications 48346, 48358 and 48359 are herewith denied on the grounds that to grant the applications for irrigation purposes on lands that the applicants do not own or control and cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

Respectfully submitted,



Peter G. Morros  
State Engineer

PGM/SW/bl

Dated this 27th day of  
February, 1987.

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<sup>2</sup> NRS Chapters 533 and 534.