

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

IN THE MATTER OF APPLICATION 52423 FILED)  
TO CHANGE THE MANNER OF USE OF THE WATER)  
OF AN UNDERGROUND SOURCE HERETOFORE )  
APPROPRIATED UNDER PERMIT 40448 IN THE )  
AMARGOSA DESERT GROUNDWATER BASIN, NYE )  
COUNTY, NEVADA )

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RULING  
# 4004

GENERAL

I.

Application 52423 was filed August 15, 1988, by Edward J. Rigler to change the manner of use of 4.0 cubic feet per second (c.f.s.), 76.468 million gallons annually, of water heretofore appropriated under Permit 40448. The proposed use would change from quasi-municipal and domestic to irrigation on 115 acres of land within 169.6 acres in Sections 18 and 19, T.15S., R.50E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 24, T.15S., R.49E., M.D.B.&M. On December 4, 1988, Application 52423 became ready for action by the State Engineer.<sup>1</sup>

II.

Permit 40448 was issued December 22, 1982, for 4.0 c.f.s., 76.468 million gallons annually for quasi-municipal and domestic purposes in parts of Sections 13, 24 and 25, T.15S., R.49E., and parts of Sections 18, 19 and 30, T.15S., R.50E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 24, T.15S., R.49E., M.D.B.&M. The permit was issued supplemental

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<sup>1</sup>Public record in the office of the State Engineer, filed under Application 52423.

to Permit 26673, Certificate 9552, for a total combined duty of 76.468 million gallons annually.<sup>2</sup>

III.

Application 52423 was timely protested on December 5, 1988, by the National Park Service on the following grounds, to wit:

The application, if granted, may cause injury to reserved and appropriative water rights of the United States, National Park Service, Death Valley National Monument, particularly the United States' reserved water rights at Devil's Hole, a detached unit of Death Valley National Monument.

I request that this permit be denied.<sup>1</sup>

FINDINGS OF FACT

I.

The State Engineer finds that Permit 40448 and Application to Change 52423 lie within the Amargosa Desert Groundwater Basin which was designated by the State Engineer on May 14, 1979, as a basin needing additional administration pursuant to NRS 534.120.<sup>3</sup>

II.

Previous applications to appropriate water for irrigation within the Amargosa Groundwater Basin have been denied prior to the original approval of Permit 40448 totaling 4,560 acres with dates of priority ranging from July 30, 1976 to September 19,

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<sup>2</sup>Public record in the office of the State Engineer, filed under Permit 40448.

<sup>3</sup>See Order No. 724 dated May 14, 1979.

1978.<sup>4</sup> The date of priority of Permit 40448 is February 4, 1980.<sup>2</sup>

The State Engineer is authorized and directed to designate preferred uses of water within designated ground water basins.<sup>5</sup> The State Engineer, in a ruling dated June 25, 1979, declared the consumptive use of ground water to irrigate additional land within the Amargosa Desert Ground Water Basin is not considered to be a preferred use of the limited ground water resources within that basin.<sup>6</sup>

### III.

Records and information available to the State Engineer indicate that Application 52423 was filed in support of Desert Land Entry Application N-39949.<sup>7</sup>

### IV.

By copy of a decision dated December 5, 1988, the United States Department of Interior, Bureau of Land Management, notified the State Engineer that Desert Land Entry Application N-39949 had been rejected.<sup>7</sup> By copy of a letter dated September 27, 1991, the

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<sup>4</sup>Public records in the office of the State Engineer under Applications 30443, 31962, 31963, 32120, 32323, 32506, 32507, 32508, 32509, 32510, 32511, 32512, 32731, 32732, 32733, 33011, 33156, 33190, 33344, 33345, 34564, 34635, 34878, 35220, 35647, 35648, 35855 and 35893.

<sup>5</sup>NRS 534.120, subsection 2.

<sup>6</sup>See Ruling No. 2480, public record in the office of the State Engineer.

<sup>7</sup>Copy of BLM Decision dated December 5, 1988, filed under Application 52423.

Bureau of Land Management notified the State Engineer that the case file for N-39949 was closed because an appeal was not received within the statutory time period.<sup>8</sup>

V.

The State Engineer finds that the applicant of Application 52423 does not own or control the land described under the place of use of the application.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.<sup>9</sup>

II.

The State Engineer is prohibited by law from granting a permit where:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.<sup>10</sup>

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<sup>8</sup>Copy of certified mail dated September 27, 1991, from Runore Wycoff, Area Manager of BLM to Edward J. Rigler, filed under Application 52423.

<sup>9</sup>NRS 533 and 534.

<sup>10</sup>NRS Chapter 533.370, subsection 3.

III.

The State Engineer concludes that Application 52423 was filed in support of a Desert Land Entry. The Desert Land Entry application described as N-39949 has been rejected by and closed on the records of the Bureau of Land Management. Therefore, the State Engineer concludes the applicant does not own or control the land described under the place of use of the application and cannot demonstrate the ability to place the water to beneficial use.

IV.

The State Engineer concludes that to grant an application 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 prove detrimental to the public interest and welfare.

V.

The State Engineer concludes that if Application 40448 had been filed for irrigation purposes it would have been denied. Permit 40448 was granted supplemental to an existing quasi-municipal permit at a time when irrigation permits were being denied. The granting of Application 52423 would result in the preferred use of quasi-municipal being changed to the non-preferred use of irrigation.

**RULING**

Application 52423 is herewith denied on the grounds that to grant an application for irrigation purposes on lands that the

applicant does not own or control, and where the applicant cannot demonstrate the ability to place the water to beneficial use, would be detrimental to the public interest and welfare. In addition, to grant an application to change water granted for quasi-municipal purposes to irrigation purposes in a basin where irrigation was being denied at the time of the original appropriation would not be in the public interest. No ruling is made on the validity of the protest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/CB/bk

Dated this 28th day of  
June, 1993.