

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

IN THE MATTER OF CHANGE APPLICATION )  
58255 FILED TO CHANGE THE POINT OF )  
DIVERSION AND PLACE OF USE OF THE )  
UNDERGROUND WATERS OF WASHOE VALLEY )  
GROUNDWATER BASIN (89), WASHOE )  
COUNTY, NEVADA. )

RULING

# 4377

GENERAL

I.

Application 58255 was filed on October 16, 1992, by Paul E. and Rita C. Oakes to change the point of diversion and place of use of 0.22 cfs, a portion of the underground waters previously appropriated under Permit 35625. The proposed point of diversion under Application 58255 is described as being located in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.16 N., R.19 E., M.D.B. & M., with the proposed place of use being described as located within Lots 7, 8 and 11 of the Franktown Hills Subdivision No. 2, in the E $\frac{1}{2}$  NE $\frac{1}{4}$ , the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , and the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 9.<sup>1</sup>

II.

Permit 56742 was granted on September 3, 1992, changed the point of diversion and place of use of 0.28 cfs, 16.88 afa, a portion of the waters previously appropriated under Permit 35625.<sup>2</sup> This left a diversion rate of 0.22 cfs and a total duty of 4.32 mga remaining under Permit 35625.

FINDINGS OF FACT

I.

The remaining 0.22 cfs, 4.32 million gallons annually, under Permit 35625 was cancelled by the State Engineer on October 15, 1992, for failure to comply with the permit terms.<sup>3</sup> On December

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<sup>1</sup>File No. 58255, official records of the Office of the State Engineer.

<sup>2</sup>File No. 56742, official records of the Office of the State Engineer.

<sup>3</sup>File No. 35625, official records of the Office of the State Engineer.

10, 1992, the permittee requested a hearing pursuant to NRS 533.395 on the cancellation of Permit 35625. After all parties of interest were duly noticed by certified mail, an administrative hearing was held with regard to the cancellation of Permit 35625 on September 11, 1995, at Carson City, Nevada, before representatives of the Office of the State Engineer.<sup>4</sup>

The State Engineer finds that by State Engineer Ruling No. 4307, the cancellation of Permit 35625 was affirmed, and no appeal was timely filed from that decision. Therefore, the cancellation of Permit 35625 is final. The State Engineer further finds that the cancellation of Permit 35625 left no remaining valid water right under Permit 35625.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the subject matter of this determination.<sup>5</sup>

II.

NRS 533.345(1) provides that an application can be filed to change the place of diversion, manner or place of use of water already appropriated. Water already appropriated, in reference to a change application, refers to water represented by a water right permit or certificate in good standing.<sup>6</sup> Where a 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. The State Engineer concludes that Change Application 58255 cannot be granted as the underlying Permit 35625 which supported the change application has been cancelled; therefore, no water right exists that can be used to support the change application.

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<sup>4</sup>Transcript, public administrative hearing before the State Engineer, September 11, 1995.

<sup>5</sup>NRS Chapters 533 and 534.

<sup>6</sup>NRS 533.324.

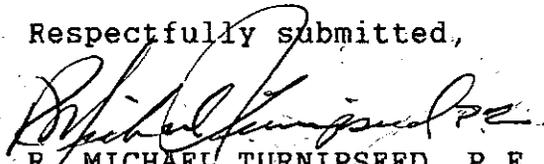
III.

The State Engineer concludes that as Permit 35625 has been cancelled no valid water right exists that can be changed by a permit granted under Application 58255.

RULING

Application 58255 is hereby denied on the ground that the base permit is cancelled; thus, no water right exists that can be changed by Application 58255.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJT/ab

Dated this 22nd day of  
July, 1996.