

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

IN THE MATTER OF APPLICATIONS 57178, 58387,)
59040, 60198, 62671 62673 AND 62674 FILED TO)
CHANGE THE POINTS OF DIVERSION, PLACES OF)
USE AND MANNER OF USE OF WATER)
PREVIOUSLY APPROPRIATED UNDER PERMIT)
14576, CERTIFICATE 5329, WITHIN THE PAHRUMP)
VALLEY HYDROGRAPHIC BASIN (162), NYE)
COUNTY, NEVADA.)

RULING

4928

GENERAL

I.

Application 57178 was filed February 11, 1992, by Rita Licata, Rose M. Piazza, Lorrie Simonetti, Bill Terrell, Anna Terrell, David Licata, Patsy Licata and Joseph Licata to change the point of diversion, place of use and manner of use of 0.0113 cubic feet per second (cfs), not to exceed 4.5 acre-feet annually (afa), a portion of the underground waters previously appropriated under Permit 14576, Certificate 5329. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.21S., R.54E., M.D.B.&M. The proposed manner of use is for quasi-municipal purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.21S., R.54E., M.D.B.&M.¹

II.

Application 58387 was filed December 10, 1992, by Ronald B. Adams and Sandra L. Adams to change the point of diversion, place of use and manner of use of 0.0063 cfs, not to exceed 3.0 afa, a portion of the underground waters previously appropriated under Permit 14576, Certificate 5329. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.19S., R.53E., M.D.B.&M. The proposed manner of use is for irrigation and domestic purposes within SW $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.19S., R.53E., M.D.B.&M.²

III.

Application 59040 was filed on July 22, 1993, by Water Rock Ranch to change the point of diversion, place of use and manner of use of 0.01 cfs, not to exceed 1.0 afa, a portion of underground waters previously appropriated under Permit 14576, Certificate

¹ File No. 57178, official record in the office of the State Engineer.

² File No. 58387, official record in the office of the State Engineer.

5329. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T.18S., R.53E., M.D.B.&M. The proposed manner of use is for commercial and domestic purposes within S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 33, T.18S., R.53E., M.D.B.&M.³

IV.

Application 60198 was filed on July 6, 1994, by Phillip G. Jensen to change the point of diversion, place of use and manner of use of 0.01 cfs, not to exceed 1.0 afa, a portion of underground waters previously appropriated under Permit 14576, Certificate 5329. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T.20S., R.53E., M.D.B.&M. The proposed manner of use is for commercial and domestic purposes within SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T.20S., R.53E., M.D.B.&M.⁴

V.

Application 62671 was filed December 17, 1996, by Daniel Daffer and Cheryl Daffer to change the point of diversion, place of use and manner of use of 0.02 cfs, not to exceed 2.0 afa, a portion of the underground waters previously appropriated under Permit 14576, Certificate 5329. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T.19S., R.53E., M.D.B.&M. The proposed manner of use is for commercial and domestic purposes within E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 36, T.19S., R.53E., M.D.B.&M.⁵

VI.

Application 62673 was filed on December 17, 1996, by James C. Gomes and Lesley J. Murakam to change the point of diversion, place of use and manner of use of 0.03 cfs, not to exceed 3.0 afa, a portion of the underground waters previously appropriated under Permit 14576, Certificate 5329. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T.20S., R.53E., M.D.B.&M. The proposed manner of use is for commercial and domestic purposes within NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T.20S., R.53E., M.D.B.&M.⁶

³ File No. 59040, official records in the office of the State Engineer.

⁴ File No. 60198, official records in the office of the State Engineer.

⁵ File No. 62671, official records in the office of the State Engineer.

⁶ File No. 62673, official records in the office of the State Engineer.

VII.

Application 62674 was filed on December 17, 1996, by Rosemarie Ricks to change the point of diversion and place of use of 0.10 cfs, not to exceed 10.0 afa, a portion of the underground waters previously appropriated under Permit 14576, Certificate 5329. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 34, T.19S., R.53E., M.D.B.&M. The application was filed for irrigation and domestic purposes within the SE¼ NW¼ of Section 34, T.19S., R.53E., M.D.B.&M.⁷

VIII.

Permit 14576 was issued February 18, 1953, for irrigation and domestic purposes. Amended Certificate 5329 was issued June 20, 1963, for 2.0 cfs, not to exceed 800.0 afa. On July 1, 1991, the water rights under Permit 14576, Certificate 5329, were sold at auction to numerous buyers in various amounts.⁸

IX.

On December 1, 1997, the State Engineer forfeited 18.0 afa, the portion of Permit 14576, Certificate 5329, in the name of Leonard Hamburg.⁹

FINDINGS OF FACT

I.

A Grant, Bargain, and Sale Deed was filed in the office of the State Engineer on February 27, 1992, pursuant to which 32.0 afa of water rights under Permit 14576, Certificate 5329, were conveyed to Leonard Hamburg.⁹ Deeds submitted to the State's Engineer's office transferred a total of 14.0 afa from Leonard Hamburg to various parties prior to the forfeiture of the remaining 18.0 afa that was held in the name of Leonard Hamburg as of December 1, 1997. State Engineer's Ruling No. 4888 summarizes transactions between Leonard Hamburg and the parties to whom he sold portions of water rights under Permit 14576.¹⁰ The summary in Ruling 4888 includes the Nye County Recorder's document number, the amount of water purchased, the execution date and recording dates of the transactions, the date the documents were filed with the State

⁷ File No. 62674, official records in the office of the State Engineer.

⁸ Auction Notice filed in File No. 14261, official records in the office of the State Engineer

⁹ File No. 14576, official records in the office of the State Engineer.

¹⁰ State Engineer's Ruling No. 4888, dated March 28, 2000, official records in the office of the State Engineer.

Engineer and the associated change application number, the date any change application was ready for action and the date any permit was granted by the State Engineer. The State Engineer finds that the deeds submitted prior to the forfeiture are not from the applicants whose application are under consideration in this ruling, with the exception of 2.0 afa in the name of Rose Marie Ricks which is a portion of Application 62674.

II.

Change Applications 57178, 58387, 59040, 60198, 62671 and 62673 were filed and came ready for action by the State Engineer prior to the date of forfeiture of the Leonard Hamburg portion of Permit 14576, Certificate 5329. The change applications under consideration in this ruling were filed in a timely manner after purchasing said water from Leonard Hamburg. However, no report of conveyance had been filed to update the ownership of record of Permit 14576 to the applicants under Applications 57178, 58387, 59040, 60198, 62671 and 62673 prior to the date the forfeiture was declared. The State Engineer finds the reports of conveyances under Permit 14576 which were from the applicants under Applications 57178, 58387, 59040, 60198, 62671 and 62673 were filed after the date of the forfeiture was declared.

III.

By letter dated May 8, 1998, the State Engineer notified the applicants under Applications 57178, 58367, 59040, and 60198 that the applicants had to complete a chain of title from the owner of Permit 14576 to themselves before the applications could be acted upon.^{1,2,3,4,5,6} Under Ruling No. 4888, a determination of ownership was made as to the portions of Permit 14576 conveyed by Leonard Hamburg to the various parties involved in this ruling.¹¹ The State Engineer finds that title to ownership of a portion of the water rights under Permit 14576 has been brought forward into the names of the applicants of Applications 57178, 58387, 59040, 60198, 62671, 62673 and 62674.

IV.

Notice of forfeiture of water rights dated December 1, 1997, was sent by certified mail to Leonard Hamburg, forfeiting the 18.0 afa of Permit 14576, Certificate 5329, which was the portion of said water right remaining in the name of Leonard Hamburg as of December 1, 1997.⁸ Leonard Hamburg did not appeal the forfeiture of the 18.0 afa

¹¹ Ibid, page 6.

portion of Permit 14576. The State Engineer finds that even though the reports of conveyance were not filed until after the date upon which the forfeiture was declared, the addresses of the applicants of the change applications were on file and available to the State Engineer. Furthermore, the State Engineer finds that by failing to notice the applicants involved in this ruling of the forfeiture of Leonard Hamburg's portion of Permit 14576, the applicants were not given an opportunity to appeal the forfeiture within the statutory period.¹²

CONCLUSION

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹³

II.

The State Engineer is prohibited by law from granting an application to change the public waters where:¹⁴

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

The reports of conveyance from the applicants of Applications 57178, 58387, 59040, 60198, 62671, 62673 and 62674 under Permit 14576 were filed after the date the forfeiture was declared. The notice of forfeiture of a portion of the waters under Permit 14576, Certificate 5329, did not include any of the parties who had change applications on file with the State Engineer, it only included the owners of record of the portions being forfeited. The State Engineer concludes that by not noticing the applicants of the forfeiture they had no knowledge of its occurrence and were not given the opportunity to appeal the declared forfeiture within the statutory period as set forth in NRS § 533.450.

¹² NRS § 533.450.

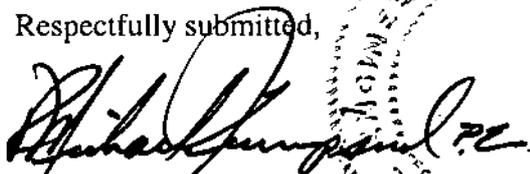
¹³ NRS chapters 533 and 534.

¹⁴ NRS § 533.370(3).

RULING

The forfeiture of the 18.0 afa of water under Permit 14576, Certificate 5329, previously under the name of Leonard Hamburg is hereby declared vacated. The requested transfer under Applications 57178, 58387, 59040, 60198, 62671, 62673, and 62674 will be acted upon based on their own merit and in accordance with NRS chapters 533 and 534.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/KWH/cl

Dated this 31st day of

May, 2000.