

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

IN THE MATTER OF APPLICATIONS)
47618, 47619, 47620 AND 47621 FILED)
TO CHANGE THE POINT OF DIVERSION,)
PLACE OF USE AND MANNER OF USE OF)
WATER PREVIOUSLY APPROPRIATED UNDER)
PERMIT 10502 CERTIFICATE 4796,)
PERMIT 10493 CERTIFICATE 4794,)
PERMIT 10501 CERTIFICATE 4795 AND)
PERMIT 11321 CERTIFICATE 4797,)
RESPECTIVELY, FROM UNDERGROUND)
SOURCES LOCATED WITHIN THE BIG)
SMOKY VALLEY (TONOPAH FLAT))
HYDROGRAPHIC BASIN (137A), NYE)
COUNTY, NEVADA.)

RULING

4992

GENERAL

I.

Application 47618 was filed on January 27, 1984, by A. L. Gasper, to change the point of diversion, place of use, and manner of use of 0.12 cubic feet per second (cfs) of water previously appropriated under Permit 10502, Certificate 4796 for quasi-municipal and domestic purposes within portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, and portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T.3N., R.42E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T.3N., R.42E., M.D.B.&M.¹

II.

Application 47619 was filed on January 27, 1984, by A. L. Gasper, to change the point of diversion, place of use, and manner of use of 0.15 cfs, of water previously appropriated under Permit 10493, Certificate 4794 for quasi-municipal and domestic purposes within portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, and portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T.3N., R.42E., M.D.B.&M. The proposed point of diversion is

¹ File No. 47618, official records in the office of the State Engineer.

described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14, T.3N., R.42E., M.D.B.&M.²

III.

Application 47620 was filed on January 27, 1984, by A. L. Gasper, to change the point of diversion, place of use, and manner of use of 0.15 cfs, of water previously appropriated under Permit 10501, Certificate 4795 for quasi-municipal and domestic purposes within portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, and portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T.3N., R.42E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, T.3N., R.42E., M.D.B.&M.³

IV.

Application 47621 was filed on January 27, 1984, by A. L. Gasper, to change the point of diversion place of use and manner of use of 0.02 cfs, of water previously appropriated under Permit 11321, Certificate 4797 for quasi-municipal and domestic purposes within portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, and portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T.3N., R.42E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T.3N., R.42E., M.D.B.&M.⁴

FINDINGS OF FACT

I.

On February 17, 1984, Applications 47618 through 47621, inclusive, were returned to the applicant for correction. In the return for correction letter the applicant was advised of the need to update the ownership status of the permits being changed.

² File No. 47619, official records in the office of the State Engineer.

³ File No. 47620, official records in the office of the State Engineer.

⁴ File No. 47621, official records in the office of the State Engineer.

II.

On November 7, 1984, the applicant was informed by the office of the State Engineer of the need to amend the place of use of the applications and to provide an agreement between the applicant and the Tonopah Public Utilities stating that the proposed wells under Applications 47618 through 47621, inclusive, can be used as back-up wells for the Tonopah municipal system. The need to resolve the discrepancy in ownership between the applications and the permits being changed was also mentioned.

III.

On May 19, 1998, a letter from the office of the State Engineer was sent to the applicant requesting the same information as requested in the November 7, 1984, letter. The applicant was also advised that his failure to timely respond to this request within thirty days from the date of the letter would result in the possible denial of the subject applications. This letter was returned by the U.S. Postal Service stamped "Return To Sender-Forwarding Order Expired" on June 22, 1998.

IV.

It has been a long standing policy within the office of the State Engineer that it is the applicant's responsibility to inform said office of any changes which may occur in the ownership and address associated with a specific water right application. The State Engineer finds that the owner of record under Applications 47618 through 47621, inclusive, was properly noticed of the opportunity to express his continued interest in pursuing Applications 47618 through 47621, inclusive, , but has failed to do so; therefore, Applications 47618 through 47621, inclusive, may be considered for denial.

V.

A review of assignment of ownership records on file in the office of the State Engineer indicates that no transfer of ownership documents have been received to date to change ownership of Permit 10502 Certificate 4796, Permit 10493 Certificate 4794, Permit 10501 Certificate 4795, Permit 11321 Certificate 4797 and Applications 47618 through 47621, inclusive, into the applicant's name.

VI.

The State Engineer finds that the applicant was properly notified of the request for additional information and failed to respond.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.⁶

III.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:⁷

- A. the proposed use conflicts with existing rights; or
- B. the proposed use threatens to prove detrimental to the public interest.

IV.

The applicant was properly notified of the requirement for additional information concerning said applications and has failed

⁵ NRS chapters 533 and 534.

⁶ NRS § 533.375.

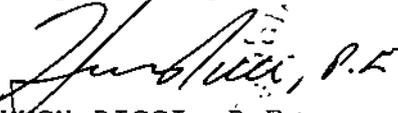
⁷ NRS § 533.370(3).

to submit the information requested to the State Engineer. The State Engineer concludes that without the information requested sufficient information is not available for the State Engineer to properly guard the public interest.

RULING

Applications 47618, 47619, 47620 and 47621 are hereby denied on the grounds that the applicant has not submitted the information requested by the State Engineer's office and that without this information the granting of the applications would threaten to prove detrimental to the public interest. In addition, the State Engineer finds he cannot approve a change application where the applicant has not brought title into his name for the waters sought to be changed.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/KEE/cl

Dated this 22nd day of
December, 2000.