

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

IN THE MATTER OF APPLICATIONS 65018 )  
AND 65023 FILED TO CHANGE THE POINT )  
OF DIVERSION AND PLACE OF USE OF )  
THE UNDERGROUND WATER PREVIOUSLY )  
APPROPRIATED UNDER APPLICATIONS )  
31542 AND 31545 WITHIN THE STONE )  
CABIN VALLEY HYDROGRAPHIC BASIN )  
(149), NYE COUNTY, NEVADA. )

RULING

# 5124

GENERAL

I.

Application 65018 was filed on April 7, 1999, by Mary Louise Carlson to change the point of diversion and place of use of 2.7 cubic feet per second (cfs), a portion of the underground water previously requested for appropriation under Application 31542 for irrigation and domestic use within the SE $\frac{1}{4}$  of Section 12, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of said section 12.<sup>1</sup>

II.

Application 65023 was filed on April 7, 1999, by Gary J. Fredrickson to change the point of diversion and place of use of 2.7 cfs, a portion of the underground water previously requested for appropriation under Application 31545 for irrigation and domestic use within the NE $\frac{1}{4}$  of Section 22, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of said section 22.<sup>2</sup>

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<sup>1</sup> File No. 65018, official records in the Office of the State Engineer.

<sup>2</sup> File No. 65023, official records in the Office of the State Engineer.

**FINDINGS OF FACT**

**I.**

Application 65018 requests a change in the point of diversion and place of use of the underground water previously requested for appropriation under Application 31542. This earlier application, which represents the base right requested for change under Application 65018, was denied by State Engineer's Ruling Number 5020 on May 9, 2001. The State Engineer finds that the denial of Application 31542 removed the water right application targeted for change under Application 65018.

**II.**

Application 65023 requests a change in the point of diversion and place of use of the underground water previously requested for appropriation under Application 31545. This earlier application, which represents the base right requested for change under Application 65023, was denied by State Engineer's Ruling Number 5020 on May 9, 2001. The State Engineer finds that the denial of Application 31545 removed the water right application targeted for change under Application 65023.

**III.**

Nevada Revised Statute § 533.325 provides that an application can be filed to change the point of diversion, place of use or manner of use of water already appropriated. Water already appropriated, in reference to a change application, refers to water represented by a water right in good standing.<sup>3</sup> Where a water right application has been denied, and no permit issued, the water right no longer exists and cannot be used to support a change application. The State Engineer finds that Applications 31542 and 31545 cannot be used to support the changes proposed under Applications 65018 and 65023.

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<sup>3</sup> NRS § 533.324

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>4</sup>

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:<sup>5</sup>

- A. the proposed use or change conflicts with existing rights;
- B. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- C. the proposed use or change threatens to prove detrimental to the public interest.

III.

Applications 65018 and 65023 propose to change water right applications that were previously denied by the State Engineer. The State Engineer concludes that it would threaten to prove detrimental to the public interest to approve a change of water right application where there is no base right to support the change application.

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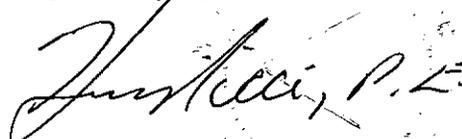
<sup>4</sup> NRS chapters 533 and 534.

<sup>5</sup> NRS § 533.370(3).

RULING

Applications 65018 and 65023 are hereby denied on the grounds that due to the denial of Applications 31542 and 31545, no water right applications exist that can be changed.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

WKM/jm

Dated this 14th day of  
May, 2002.