

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

IN THE MATTER OF APPLICATION)
67403 FILED TO CHANGE THE POINT)
OF DIVERSION AND PLACE OF USE)
OF THE WATER PREVIOUSLY)
APPROPRIATED FROM SHEEP CREEK)
UNDER PERMIT 2780, WITHIN THE)
CLOVERS AREA HYDROGRAPHIC)
BASIN (04-64), LANDER COUNTY,)
NEVADA.)

RULING

#5338

GENERAL

I.

Application 67403 was filed April 9, 2001, by Walter I. Leberski, as agent for the 26 Ranch, Inc., a Colorado Corporation, to change the point of diversion and place of use of 4.8 cubic feet per second (cfs), of water from Sheep Creek previously appropriated under Permit 2780. The proposed manner and place of use is for irrigation purposes within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9; NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T.35N., R.45E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, T.35N., R.45E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Application 67403 requests a change in the point of diversion and place of use of water previously appropriated under cancelled Permit 2780². This early water right which would represent the permit that formed the basis for the change under Application 67403, was cancelled on November 2, 1971, for failure to submit the required fees for issuing and recording a certificate which was required by law by the amendment of NRS § 533.425 in 1967.³

¹ File No. 67403, official records in the Office of the State Engineer.

² NRS § 533.324.

³ NRS § 533.425.

The significant dates and correspondence relating to the cancellation of Permit 2780 are as follows:⁴

- Application 2780 filed September 17, 1913.
- Report of Completion filed March 3, 1917.
- Proof of Beneficial Use filed November 8, 1919.
- Proof of Beneficial Use returned November 22, 1919.
- Proof of Beneficial Use resubmitted May 24, 1921.
- Letter requesting payment of \$3.00 fee for issuing and recording certificate April 28, 1971, letter returned on April 29, 1971, indicating permittee deceased.
- November 2, 1971, permit cancelled.
- Letter received from Samuel E. King, leasee of the Twenty-Five Properties, March 12, 1985, in Office of State Engineer requesting issuance of certificate.
- Letter dated December 5, 2000 from State Engineer's Office indicating issues on place of use still unresolved.

The permit file cover and the official book record of Permit 2780 were stamped cancelled and dated November 2, 1971. The cancellation date and the State Engineer's signature were at some time blacked out with ink with no date or initial of the individual performing the task. The official book record of Permit 2780 was unaltered and still reflected the cancellation of the permit. Based on the above facts, the State Engineer finds that Permit 2780 has been permanently cancelled and is no longer considered a water right in good standing, therefore, no water is available for transfer under Application 67403.

⁴ File No. 2780, official records in the Office of the State Engineer.

II.

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, in reference to a change application, refers to water represented by a water right in good standing.² Where a water right permit has been cancelled, the water right no longer exists and cannot be used to support a subsequent change application. The State Engineer finds that cancelled Permit 2780 cannot be used to support the change proposed under Application 64703.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting a change application to change the public waters where:⁵

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with the protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

Application 67403 proposes to change a water right that was previously cancelled by the State Engineer. The State Engineer concludes that it would threaten to prove detrimental to the public interest to approve a change of a water right permit that is no longer considered to be in good standing.

⁵ NRS § 533.370(3).

RULING

Application 67403 is hereby denied on the grounds that the water right it proposes to change is no longer in good standing.

Respectfully submitted,

A handwritten signature in cursive script, reading "Hugh Ricci, P.E.", is written over a faint circular stamp.

Hugh Ricci, P.E.
State Engineer

HR/KH/dl

Dated this 9th day of
March, 2004.