

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

IN THE MATTER OF APPLICATION)
70580 FILED TO CHANGE THE)
POINT OF DIVERSION, PLACE OF)
USE AND MANNER OF USE OF THE)
WATERS OF THE PAHRUMP VALLEY)
HYDROGRAPHIC BASIN (162), NYE)
COUNTY, NEVADA.)

RULING

#5372

GENERAL

I.

Application 70580 was filed on October 29, 2003, by Nye County, State of Nevada to change the point of diversion, place and manner of use of 0.057 cubic feet per second, not to exceed 25.0 acre-feet annually, of the underground waters of the Pahrump Valley Hydrographic Basin previously appropriated under Permit 17457, Certificate 5333. The proposed manner of use is for municipal purposes within the Pahrump Regional Planning District as described in Exhibit A attached to the application. The proposed point of diversion is described as being located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.20S., R.53E., M.D.B.&M.¹

FINDINGS OF FACT

I.

By letter dated October 2, 2003, the State Engineer informed the holder of Permit 17457, Certificate 5333, that the water may be subject to forfeiture.² The State Engineer's letter provided the permit holder an opportunity to present any information it had that the water had been used for the purpose for which the permit was issued within the forfeiture time frame described in

¹ File No. 70580, official records in the Office of the State Engineer.

² File No. 17457, official records in the Office of the State Engineer.

the letter. The permit holder was advised that failure to supply said evidence within the 60-day period provided would result in the declaration of forfeiture of the permit. The State Engineer finds that no information was provided in response to the State Engineer's letter. By letter dated December 19, 2003, the State Engineer declared Permit 17457, Certificate 5333, forfeited.

II.

On October 29, 2003, Nye County filed Application 70580 to change the point of diversion, place and manner of use of a portion of Permit 17457, Certificate 5333. The State Engineer finds that on the date Nye County filed Application 70580, Permit 17457, Certificate 5333, was already the subject of a claim and proceeding of forfeiture pursuant to the notice of October 2, 2003.

CONCLUSIONS OF LAW

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 permit under a change application that requests to appropriate the public waters where:⁴

- 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 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.

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(4).

III.

Nevada Revised Statute 533.345(1) provides that an application can be filed to change the point of diversion, manner or place of use of water already appropriated. Water already appropriated refers to water represented by a permit or certificate in good standing.⁵ Where a certificate has been forfeited the water right is no longer valid; thus, it is not in good standing and cannot be used to support a change application. Where a certificate is the subject of a forfeiture claim or proceeding, a change application does not toll that proceeding or cure said claim of forfeiture.⁶ The State Engineer concludes that the filing of change Application 70580 did not toll the forfeiture proceeding or cure the forfeiture.

IV.

Under Nevada Revised Statute 534.090, the water right reverted to the public once the State Engineer declared it forfeited and that forfeiture became final when the permit holder failed to timely appeal the declaration of the forfeiture of Permit 17457, Certificate 5333. The State Engineer has declared the water right sought to be changed as forfeited. Therefore, it is not in good standing and cannot be changed by Application 70580. The State Engineer concludes Application 70580 is subject to denial.

RULING

Application 70580 is hereby denied on the grounds that the water right that forms the basis for the change application is forfeited and is no longer an active water

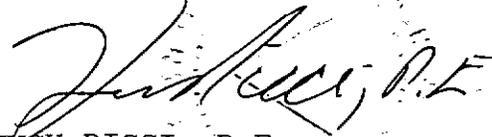
⁵ NRS 533.324.

⁶ *Town of Eureka v. State Engineer*, 108 Nev. 163 (1992), *Preferred Equities Corp. v. State Engineer*, 119 Nev., Advance Opinion 44 (2003).

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right available to be changed, and to grant a permit to change a forfeited water right would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 11th day of
June, 2004.