

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

IN THE MATTER OF APPLICATION)
31544 FILED TO APPROPRIATE AND)
PROTESTED APPLICATIONS 65020)
AND 65021 FILED TO CHANGE THE)
UNDERGROUND WATERS OF THE STONE)
CABIN VALLEY HYDROGRAPHIC BASIN)
(149), NYE COUNTY, NEVADA.)

RULING

#5446

GENERAL

I.

Application 31544 was filed on May 9, 1977, by Green Ridge Water Company to appropriate 5.4 cubic feet per second (cfs) of underground water from the Stone Cabin Valley Hydrographic Basin for irrigation and domestic purposes within the S½ of Section 24, T.1N., R.46E., M.D.B. & M. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 24, T.1N., R.46E., M.D.B. & M. The remarks section of the application indicates that entry to the proposed place of use will be pursuant to a Carey Act application.¹ The records of the Office of the State Engineer indicate that Vernon V. Fredrickson is the present owner of Application 31544.

II.

Application 65020 was filed on April 7, 1999, by Vernon V. Fredrickson to change the point of diversion and place of use of 2.7 cfs, a portion of the water requested for appropriation under Application 31544 for irrigation and domestic purposes within the SW¼ of Section 11, T.1N., R.46E., M.D.B. & M. The proposed point of diversion is described as being located within the NW¼ SW¼ of Section 11, T.1N., R.46E., M.D.B. & M. The remarks section of the application indicates that entry to the proposed place of use will be pursuant to a Carey Act application.²

¹ File No. 31544, official records in the Office of the State Engineer.

² File No. 65020, official records in the Office of the State Engineer.

III.

Application 65021 was filed on April 7, 1999, by Vernon V. Fredrickson to change the point of diversion and place of use of 2.7 cfs, a portion of the water requested for appropriation under Application 31544 for irrigation and domestic purposes within the SE¼ of Section 11, T.1N., R.46E., M.D.B. & M. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 11, T.1N., R.46E., M.D.B. & M. The remarks section of the application indicates that entry to the proposed place of use will be pursuant to a Carey Act application.³

IV.

Applications 31544, 65020 and 65021 were denied by State Engineer's Ruling No. 5020.⁴ By Stipulation, in settlement of litigation, the applications were remanded to the State Engineer for further consideration.^{1, 2, 3}

In State Engineer's Ruling No. 5020, the State Engineer summarized a long history relating to Application 31544, among others.⁵

V.

Applications 65020 and 65021 were protested by Elwood Wayne Hage on the following grounds:

1. No permit had been issued under Application 31544 so the water sought to be changed is not water already appropriated within the meaning of NRS § 533.324.
2. The water right has never been perfected due to non-use, non-diversion, and/or failure to appropriate and apply the water in question to beneficial use within a reasonable period of time.
3. The applicant has abandoned the water right.
4. The applicant has forfeited the water right.
5. The applicant has no legal right to enter the BLM land on

³ File No. 65021, official records in the Office of the State Engineer.

⁴ State Engineer's Ruling No. 5020, dated May 9, 2001, official records in the Office of the State Engineer.

⁵ State Engineer's Ruling No. 5020, dated May 9, 2001, official records in the Office of the State Engineer.

which the proposed point of diversion and/or place of use are located; therefore, the applicant cannot put the water to beneficial use.

6. Granting the applications would result in illegal infringement of protestant's certificated and/or vested water rights, including but not limited to Permit No. 43016, Certificate No. 10697, such being a certificate to appropriate .0094 cubic feet per second or sufficient water to water 300 head of cattle from an underground source located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T.1N., R.46E., M.D.B.&M.

7. The applicant does not own the land to which the water would be applied, but rather the proposed point of diversion and place of use are on property the surface estate of which is owned by the protestant, and granting the application would interfere with the vested property rights of the protestant, including, but not limited to vested water rights, ditch rights of way and related access rights, as well as forage rights, historic grazing rights and surface estate rights.

VI.

Nevada Revised Statute § 533.365 provides that the State Engineer shall consider a protest timely filed, but that it is within his discretion whether or not to hold an administrative hearing as to any particular water right application. The State Engineer finds he has sufficient information to review these specific applications and that an administrative hearing in this instance is not necessary.

FINDINGS OF FACT

I.

The protestant alleges that no permit has been issued under Application 31544 so the water sought to be changed is not water already appropriated within the meaning of NRS § 533.324. By this ruling the State Engineer is granting Application 31544; therefore, the State Engineer finds this protest issue is moot.

II.

The protestant alleges that the water right has never been perfected due to non-use, non-diversion, and/or failure to appropriate and apply the water in question to beneficial use within a reasonable period of time. The State Engineer finds this protest issue makes no sense in light of the fact that the original application sought to be changed was not granted until this time. There is no right of diversion or use until the permit is granted.

III.

The protestant alleges that the applicant has abandoned the water right. The State Engineer finds this protest issue makes no sense in that the water right had not even been granted.

IV.

The protestant alleges that the applicant has forfeited the water right. The State Engineer finds this protest issue makes no sense in that the water right had not even been granted.

V.

The protestant alleges that the applicant has no legal right to enter the U.S. Bureau of Land Management (BLM) land on which the proposed point of diversion and/or place of use are located; therefore, the applicant cannot put the water to beneficial use. Further, the protestant alleges that the applicant does not own the land to which the water would be applied, but rather the proposed point of diversion and place of use are on property the surface estate of which is owned by the protestant, and granting the application would interfere with the vested property rights of the protestant, including, but not limited to vested water rights, ditch rights of way and related access rights, as well as forage rights, historic grazing rights and surface estate rights. By letter dated June 3, 2003, the BLM informed the State Engineer that the lands identified as the proposed place of use have been classified as suitable for entry and case processing has been completed to allow for such entry. The decision to allow entry was placed on hold due to the current status of the water right

applications. The State Engineer finds the BLM has indicated that right of entry will be granted upon granting of the water right applications; therefore, the applicant is being granted access to the proposed point of diversion and place of use.

VI.

The protestant alleges that granting the applications would result in illegal infringement of protestant's certificated and/or vested water rights, including but not limited to Permit 43016, Certificate 10697, such being a certificate to appropriate .0094 cfs or sufficient water to water 300 head of cattle from an underground source located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T.1N., R.46E., M.D.B.&M. The State Engineer finds these water right applications are two sections away from the water right claimed by the protestant; therefore, use of water under these applications will not result in an infringement on the protestant's water rights.

VII.

It has been the policy of state engineers to grant water rights permits to those applicants who have been granted land entry applications by the U.S. Bureau of Land Management, if other statutory criteria have been met. The State Engineer finds the BLM has indicated the applicant is being granted a right of entry to the proposed place of use under these applications; therefore, the State Engineer can undertake consideration of the water right application.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.⁶

II.

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

⁶ NRS chapters 533 and 534.

⁷ NRS § 533.370(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.

III.

The State Engineer concludes to grant the new appropriation or the change applications would not interfere with existing rights or threaten to prove detrimental the public interest.

IV.

The State Engineer concludes the applicant by the BLM's indication of right of entry has demonstrated an ability to place the water to beneficial use.

RULING

Application 31544 is hereby approved and the protests to Applications 65020 through 65021 are hereby overruled and the applications granted subject to:

1. Existing rights,
2. Notice of final and formal entry by the U.S. Department of Interior, Bureau of Land Management;
3. Submission of a monitoring plan as contemplated in the Amended Stipulation dated February 15, 1984; and
4. Payment of statutory permit fees.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 5th day of
November, 2004.