

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

IN THE MATTER OF APPLICATION 58158)
FILED TO CHANGE THE POINT OF DIVERSION)
AND PLACE OF USE OF A PORTION OF THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE PREVIOUSLY APPROPRIATED)
UNDER PERMIT 22034, CERTIFICATE 7569,)
WITHIN THE WINNEMUCCA SEGMENT)
HYDROGRAPHIC BASIN (70), HUMBOLDT)
COUNTY, NEVADA.)

RULING
5833

GENERAL

I.

Application 58158 was filed on September 29, 1992, by Donnell J. and Andree L. Richards to change the point of diversion and place of use of 0.0245 cubic feet per second (cfs), a portion of water heretofore appropriated under Permit 22034, Certificate 7569. The proposed place of use is described as being located within portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.36N., R.37E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 34.¹

II.

Certificate 7569 was issued under Permit 22034 on February 22, 1971, for 0.63 cfs of water from an underground source for irrigation and domestic purposes. The place of use is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.36N., R.37E., M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 34.²

FINDINGS OF FACT

I.

Application 58158 is seeking to change a portion of water already appropriated under Permit 22034, Certificate 7569. In reviewing a change application, one of the first steps is to determine if there is still water available under the permit or certificate that forms the basis for the

¹ File No. 58158, official records in the Office of the State Engineer.

² File No. 22034, official records in the Office of the State Engineer.

change application. A review of records on file in the Office of the State Engineer reveal a number of change applications previously approved against Permit 22034, Certificate 7569. Each change application was ultimately approved and therefore, abrogated a portion of Permit 22034, Certificate 7569. In order to determine the amount of water remaining, the following table was constructed to show each abrogation and the amount of water changed using the permitted diversion rate as the basis.

Applications to change Permit 22034, Certificate 7569	Permit Date	Diversion Rate (cfs)
31244	10/26/1977	0.0200
31245	10/26/1977	0.0160
31246	10/26/1977	0.0200
31740	12/27/1977	0.0587
33614	12/27/1978	0.0245
34811	1/11/1980	0.0815
35477	12/27/1978	0.0696
41608	4/3/1981	0.0120
46588	12/13/1985	0.3032
46589	12/13/1985	0.0245
TOTAL		0.6300

A review of Permit 22034, Certificate 7569, shows that the certificate was issued for 0.63 cfs. The abrogation table shows that the entire amount or 0.63 cfs has been changed, leaving no remainder. The State Engineer finds that Permit 22034, Certificate 7569 has been fully abrogated and there is no water remaining to satisfy change Application 58158.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit for an application to change the public waters where:⁴

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(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 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.

An application may be filed to change the point of diversion, manner or place of use of water already appropriated.⁵ Water already appropriated, in reference to a change application, refers to water represented by a water right permit or certificate in good standing.⁶ A review of the records on file in the Office of the State Engineer has found that Permit 22034, Certificate 7569, is completely abrogated and is no longer valid; there is no water remaining and therefore, it is not in good standing and it cannot be used as the basis for a change application.

The State Engineer concludes Permit 22034, Certificate 7569, cannot be used as the basis for change Application 58158, and therefore, further concludes that change Application 58158 is subject to denial.

RULING

Application 58158 is hereby denied on the grounds that there is no water available under the water right that forms the basis for the change application.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 11th day of
April 2008

⁵ NRS § 533.325.

⁶ NRS § 533.324.