

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

IN THE MATTER OF APPLICATION 70383 FILED TO)
CHANGE THE POINT OF DIVERSION, PLACE OF)
USE AND MANNER OF USE OF A PORTION OF THE)
PUBLIC WATERS OF AN UNDERGROUND SOURCE)
PREVIOUSLY APPROPRIATED UNDER PERMIT)
17417, CERTIFICATE 5888 AND APPLICATION)
74531 FILED TO CHANGE THE PLACE OF USE AND)
MANNER OF USE OF THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY APPLIED)
FOR UNDER APPLICATION 70383, ALL WITHIN)
THE AMARGOSA VALLEY HYDROGRAPHIC)
BASIN (230), NYE COUNTY, NEVADA.)

RULING

#6169

VACATED
BY COURT ORDER
DATE MAR. 14, 2013

GENERAL

I.

Application 70383 was filed on September 5, 2003, by Rockview Dairies, Inc., to change the point of diversion, manner of use and the place of use of a portion of the water previously perfected under Permit 17417, Certificate 5888. The amount requested for transfer is 1.4 cubic feet per second with a duty not to exceed 160.1 acre-feet annually. The manner of use issued under Permit 17417, Certificate 5888 was for the irrigation of 32.02 acres of land contained within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T.16S., R.48E., M.D.B.&M. The proposed manner and place of use is described by the Applicant as being for irrigation and domestic purposes within 32.02 acres comprising the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T.17S., R.49E., M.D.B.&M.

Application 70383 also proposes to transfer the water from the well constructed under Permit 17417, Certificate 5888 from the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T.16S., R.48E., M.D.B.&M. to an existing well that was constructed within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T.17S., R.49E., M.D.B.&M.¹

¹ File No. 70383, official records in the Office of the State Engineer.

II.

Application 74531 was filed on July 19, 2006, by Rockview Dairies, Inc., to change the place of use and manner of use of the water previously applied for under Application 70383. The proposed manner and place of use is for commercial dairy purposes within the E½ of Section 9, T.17S., R.49E., M.D.B.&M. The existing manner of use that was applied for under Application 70383 was for the irrigation of 32.02 acres of land located within the NE¼ of said Section 9. The point of diversion is not being requested for change and remains the NE¼ NE¼ of said Section 9.²

III.

Both Applications 70383 and 74531 were timely protested by the United States National Park Service on grounds that were overruled by State Engineer's Ruling No. 5902.¹

FINDINGS OF FACT

I.

The subject applications were part of a larger group of change applications that were protested by the United States National Park Service. To acquire additional information relating to the applications and their associated protests, a public hearing was held on September 5, 2007, through September 6, 2007. After reviewing the record of this hearing the State Engineer approved all but one of the applications in question.³

Shortly after Ruling No. 5902 was issued, an Application for Extension of Time to Prevent a Forfeiture was filed for under Certificate 5888 (Permit 17417). The Permittee's request for additional time was approved to December 9, 2009, thus preserving the water right for an additional year. An Extension of Time to Prevent a Forfeiture can only be granted for a maximum of twelve months, at which time the Permittee must file a new extension, or a Proof of Resumption of Use. Failure to timely file either the extension or proof will result in the forfeiture of the permit.

² File No. 74531, official records in the Office of the State Engineer.

³ State Engineer's Ruling No. 5902, dated November 4, 2008, official records in the Office of the State Engineer.

In this instance, the Permittee failed to submit either form prior to the December 9, 2009, deadline resulting in the forfeiture of Certificate 5888 (Permit 17417) on February 18, 2010.⁴ The State Engineer finds that Certificate 5888 (Permit 17417), which forms the basis for change Application 70383 has been forfeited; therefore, the change application cannot be granted as there is no existing water right to change.

II.

Once Application 70383 is denied, it can no longer be used to support the transfer proposed under Application 74531. The State Engineer finds that Application 74531 also cannot be considered for approval.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:⁶

- 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 protectable 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.

A water right application may be filed to change the point of diversion, place 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 filing that is considered to be in good standing. When Certificate 5888 was forfeited, there was no longer a valid water right to be changed by Application 70383. The State Engineer concludes it would

⁴ File No. 17417, Certificate 5888, official records in the Office of the State Engineer.

⁵ NRS Chapters 533 and 534.

⁶ NRS § 533.370(2).

threaten to prove detrimental to the public interest to grant a change application when the certificate that supported the change has been forfeited.

IV.

A similar conclusion can be applied to Application 74531. Once Application 70383 is denied it can no longer be used to support the changes proposed under Application 74531. The State Engineer concludes it would threaten to prove detrimental to the public interest to grant a change application when the application that supported the change has been denied.

RULING

Application 70383 and Application 74531 are hereby denied on the grounds that the water right filings that form the basis for their proposed changes are no longer in good standing and cannot be used to support the change applications, and therefore would prove detrimental to the public interest.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 27th day of
April, 2012.