

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

IN THE MATTER OF APPLICATIONS)
31538, 31539, 31542, AND 31545, FILED TO)
APPROPRIATE THE PUBLIC WATERS)
FROM AN UNDERGROUND SOURCE AND)
APPLICATIONS 65019, 65022 AND 65023)
FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF A)
PORTION OF WATER FROM AN)
UNDERGROUND SOURCE WITHIN THE)
STONE CABIN VALLEY HYDROGRAPHIC)
BASIN (149), NYE COUNTY, NEVADA.)

RULING
#6202

GENERAL

I.

Application 31538 was filed on May 9, 1977, by Green Ridge Water Co., and later assigned to Robert C. Hale, to appropriate 5.4 cubic feet per second (cfs) of water from an underground source for irrigation and domestic purposes. The application was filed to support Carey Act applications. The proposed place of use is described as being located within the N $\frac{1}{2}$ of Section 28, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 28.¹

II.

Application 31539 was filed on May 9, 1977, by Green Ridge Water Co., and later assigned to Rick L. Hale, to appropriate 5.4 cfs of water from an underground source for irrigation and domestic purposes. The application was filed to support Carey Act applications. The proposed place of use is described as being located within the S $\frac{1}{2}$ of Section 28, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 28.²

III.

Application 31542 was filed on May 9, 1977, by Green Ridge Water Co., and later assigned to Mary Louise Carlson, to appropriate 5.4 cfs of water from an underground source for irrigation and domestic purposes. The application was filed to support Carey Act applications.

¹ File No. 31538, official records in the Office of the State Engineer.

² File No. 31539, official records in the Office of the State Engineer.

The proposed place of use is described as being located within the S½ of Section 27, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 27.³

IV.

Application 31545 was filed on May 9, 1977, by Green Ridge Water Co., and later assigned to Gary J. Fredrickson, to appropriate 5.4 cfs of water from an underground source for irrigation and domestic purposes. The application was filed to support Carey Act applications. The proposed place of use is described as being located within the S½ of Section 26, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 26.⁴

V.

Application 65019 was filed on April 7, 1999, by Mary Louise Carlson, to change the point of diversion and place of use of a portion of water previously applied for under Application 31542, being 2.7 cfs from an underground source for irrigation and domestic purposes. The application was filed to support Carey Act applications. The proposed place of use is described as being located within the SW¼ of Section 12, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SW¼ of said Section 12.⁵

VI.

Application 65022 was filed on April 7, 1999, by Gary J. Fredrickson, to change the point of diversion and place of use of a portion of water previously applied for under Application 31545, being 2.7 cfs from an underground source for irrigation and domestic purposes. The application was filed to support Carey Act applications. The proposed place of use is described as being located within the SW¼ of Section 23, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of said Section 23.⁶

VII.

Application 65023 was filed on April 7, 1999, by Gary J. Fredrickson, to change the point of diversion and place of use of a portion of water previously applied for under Application 31545, being 2.7 cfs from an underground source for irrigation and domestic purposes. The application was filed to support Carey Act applications. The proposed place of use is described

³ File No. 31542, official records in the Office of the State Engineer.

⁴ File No. 31545, official records in the Office of the State Engineer.

⁵ File No. 65019, official records in the Office of the State Engineer.

⁶ File No. 65022, official records in the Office of the State Engineer.

as being located within the NE¼ of Section 22, T.1N., R.46E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NE¼ of said Section 22.⁷

FINDINGS OF FACT

I.

Applications 31538, 31539, 31542, and 31545 were originally denied by State Engineer's Ruling No. 2397, August 31, 1978. A court appeal by the Applicant resulted in an amended stipulation dated February 15, 1984. In this stipulation eight of the 14 original applications (Nos. 31532 through 31545, inclusive) were to be identified by the Applicant and approved by the State Engineer upon submittal of a proper suitability and availability determination and allowance of entry to the lands in accordance with Bureau of Land Management policy, procedure and determination, and other conditions. The remaining six applications would be held in abeyance pending further hydrologic study of the basin. The eight applications were identified as being Applications 31536, 31537, 31540, 31541, 31542, 31543, 31544 and 31545.

State Engineer's Ruling No. 5020, dated May 9, 2001, re-examined the issues behind Applications 35142, 31544, 31545, 65019, 65020, 65021, and 65022. The ruling noted that there was no evidence that a right of entry had ever been granted by the Nevada Division of State Lands or the United States Department of the Interior, Bureau of Land Management (BLM). Ultimately, Applications 35142, 31544, 31545, 65019, 65020, 65021, and 65022 were denied, in part, on the grounds that Applicants had not complied with the provisions of the February 15, 1984, amended Stipulation, and that their approval would prove detrimental to the public interest.

The Applicants appealed the State Engineer's Ruling No. 5020, to the Nevada Fifth Judicial District Court, Nye County. On June 4, 2004, the Court issued a Stipulation and Order Remanding State Engineer's Ruling No. 5020 In Part. In the June 4th Stipulation, it is stated that Applications 31538, 31539, 31542, and its related change Application 65019, and 31545 and its related change Application 65022 would be held in abeyance, and that "If the Petitioners do not receive any additional land for entry by December 31, 2009, these applications will be denied."⁸

⁷ File No. 65023, official records in the Office of the State Engineer.

⁸ Case No. CV 16634, Fifth Judicial District Court of the State of Nevada in and for the County of Nye, June 4, 2004.

The State Engineer finds that over 2 ½ years have passed since the deadline for obtaining entry and, to date, the Applicants have provided no evidence that they have obtained entry to the land; therefore, in accordance with the Stipulation of June 4, 2004, the applications will be denied.

II.

Applications 65019, 65022 and 65023 were filed to change Applications 31542 and 31545. For the reasons set forth in the previous finding, Applications 31452 and 31545 cannot be approved; therefore, the State Engineer finds that there is no water available for change and Applications 65019, 65022 and 65023 must also be denied.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁹

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:¹⁰

- 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.

To date, no evidence has been received from the Applicants providing a right of entry from the BLM to the lands proposed to be irrigated by Applications 31538, 31539, 31542, and 31545. The provisions set forth in the Stipulation dated June 4, 2004, have not been satisfied. Based on the findings, the State Engineer concludes that Applications 31538, 31539, 31542, and 31545 and related change Applications 65019, 65022 and 65023 are subject to denial.

IV.

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.” In reference to a

⁹ NRS Chapters 533 and 534.

¹⁰ NRS 533.370(2).

change application, water already appropriated refers to water represented by a water right permit or certificate in good standing.¹¹ The State Engineer concludes that change Applications 65019, 65022 and 65023 cannot be granted as the underlying applications, which support the change applications are denied by this ruling; therefore, no water exists that can be used to support the change applications, and to issue such applications would threaten to prove detrimental to the public interest.

RULING

Applications 31538, 31539, 31542, 31545, 65019, 65022 and 65023 are hereby denied in accordance with the Order and Stipulation of June 4, 2004, because the Applicants have not obtained the required entry to the lands and to issue any of the subject applications would threaten to prove detrimental to the public interest.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 15th day of
October, 2012.

¹¹ NRS 533.324.