

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 49211)
AND 49391 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF TROUT CREEK IN)
LOWER REESE RIVER VALLEY, LANDER)
COUNTY, NEVADA.)

RULING

GENERAL

Application 49211 was filed on July 19, 1985, by Lawrence and Betty Risner to appropriate 0.2 c.f.s. of water from Trout Creek for irrigation and domestic purposes on 40 acres of land within the SE1/4 SW1/4 Section 12, T.29N., R.44E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 12, T.29N., R.44E., M.D.B.&M.¹

Application 49391 was filed on September 16, 1985, by Lawrence and Betty Risner to appropriate 1.0 c.f.s. of water from Trout Creek for irrigation and domestic purposes on 38.49 acres of land within the SE1/4 SW1/4 Section 12, T.29N., R.44E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 12, T.29N., R.44E., M.D.B.&M.²

Application 49211 was timely protested by Leroy and Barbara Horn on the following grounds:¹

"All water has been filed on and proof of appropriation can be shown."

Application 49211 was timely protested by Robert E. and Wanda B. Chiara on the following grounds:¹

"Robert E. and Wanda B. Chiara own a ranch on Trout Creek and have a vested water on Trout Creek. The permit is no. 6456, Certificate No. 900. The water is used for irrigation purposes and stockwater."

The protestants requested that Application 49211 be denied.

A field investigation was conducted on September 6, 1985, in response to a complaint from Mr. Risner.³

The complaint stated that Mr. Horn had created a "dam" and was illegally diverting the water from Trout Creek on the complaintant's property.

¹ Public record in the office of the State Engineer under Application 49211.

² Public record in the office of the State Engineer under Application 49391.

³ Public record in the office of the State Engineer under Permit 39377.

It was stated by Mr. Horn and Mr. Chiara, and later confirmed by office records, there are several claims of vested rights and certificated water rights on Trout Creek that allow water to be diverted above, on and below the complaintant's property.

The diversion structure at issue, located on Mr. Risner's property, has been in existence since at least 1909, according to Mr. Horn and Mr. Chiara.

At the time of the investigation, there was no water flowing in Trout Creek or the diversion on the complaintant's property. A measurement of Trout Creek was taken above all the diversions that showed the creek to be flowing at 0.39 c.f.s.

FINDINGS OF FACT

I.

The following water rights and claims of vested right on Trout Creek are of record in the office of the State Engineer.⁴

1. Proof 01563, in the name of Floyd Leroy and Barbara Horn, was filed on May 13, 1918, for irrigation of 333.60 acres of land. The place of use is within Sections 35 and 36, T.30N., R.43E., M.D.B.&M.

2. Proof 02678, in the name of Leroy Horn, was filed on July 28, 1970, for irrigation of 53.8 acres of land. The point of diversion is given as within the SW1/4 NE1/4 Section 18, T.29N., R.45E., M.D.B.&M. The place of use is within Lot 4, Section 12; Lot 1, Section 13, T.29N., R.44-1/2E., M.D.B.&M.; NE1/4 NE1/4 Section 13, T.29N., R.44E., M.D.B.&M.; SE1/4 SW1/4, SW1/4 SW1/4 Section 7, T.29N., R.45E., M.D.B.&M., NE1/4 NW1/4, NW1/4 NW1/4 Section 18, T.29N., R.45E., M.D.B.&M.

3. Permit 6456, Certificate 901, in the name of Robert E. and Wanda B. Chiara, was filed on May 7, 1921, and issued for 0.2749 c.f.s. of water for irrigation of 27.49 acres of land within the NE1/4 NW1/4 Section 25, T.30N., R.43E., M.D.B.&M., The point of diversion is described as being within the SW1/4 NW1/4 Section 25, T.30N., R.43E., M.D.B.&M.

Permit 39377 was filed on October 22, 1979, in the name of Leroy and Barbara Horn, and issued for 0.0187 c.f.s. of water for stockwatering up to 187 cattle within the NW1/4 NW1/4 Section 12, SE1/4 NW1/4 Section 2, T.29N., R.44E., M.D.B.&M.; SE1/4 NE1/4, NE1/4 SE1/4 Section 30, T.30N., R.44E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 12, T.29N., R.44E., M.D.B.&M.

II.

Trout Creek is a small perennial stream which originates in the Shoshone Mountain Range and flows west toward the Lower Reese River Valley.⁵ The source of water is from snow melt and spring areas which generally results in a rapid spring runoff followed by a deminished flow that gradually recedes to the canyon areas by late summer or early fall.

⁴ Public record in the office of the State Engineer.

⁵ U.S.G.S. Quadrangle Map, 15 minute series, entitled Mt. Lewis Nev., 1949 (333).

III.

The limit and extent of the claims of vested rights for irrigation and/or stockwatering for Trout Creek have not yet been determined as set forth under Chapter 533 of NRS.

IV.

There are existing claims of vested rights and appropriated rights for irrigation and stockwatering above and below the proposed points of diversion for Applications 49211 and 49391 on Trout Creek.

V.

Applications 49211 and 49391 are new appropriations to divert up to 3.0 c.f.s. of water from Trout Creek during any time of the year for irrigation purposes.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law⁷ from granting a permit under an application to appropriate the public waters where:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

III.

Approval of Applications 49211 and 49391 would allow a substantial portion of Trout Creek to be diverted above existing certificated rights and allow diversion in a stream that has undetermined claims of vested rights for irrigation and stockwater purposes.

⁶ NRS 533.325.

⁷ NRS 533.370(3).

RULING

Applications 49211 and 49391 are hereby denied on the grounds that they would conflict with and impair existing rights on the source and that the granting thereof would be detrimental to the public interest.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/GC/bl

Dated this 17th day of
December, 1985.