

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

IN THE MATTER OF APPLICATION 64025 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS FROM AN UNNAMED STREAM )  
WITHIN THE WASHOE VALLEY )  
HYDROGRAPHIC BASIN (089), WASHOE )  
COUNTY, NEVADA. )

RULING

# 4788

GENERAL

I.

Application 64025 was filed on April 7, 1998, by Kathy Steele to appropriate 0.15 cubic feet per second of water from an unnamed stream within the Washoe Valley Hydrographic Basin, Washoe County, Nevada, for the irrigation of four acres of land within a portion of the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 23, T.17N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 23 or at a point which bears S 11° 11' 22" E., 1,742.18 feet to the South  $\frac{1}{4}$  corner of said Section 23.<sup>1</sup> Under the description of the proposed works it indicates that the works of diversion is a berm in an existing manmade ditch.

FINDINGS OF FACT

I.

Application 64025 indicates that it is filed to appropriate water from an unnamed stream in Washoe Valley. However, the map which accompanied the application shows that the water requested for appropriation is from a manmade ditch known as Browns Creek Ditch which diverts water from Browns Creek. The State Engineer finds that Application 64025 requests an appropriation of water from Browns Creek.

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<sup>1</sup> File No. 64025, official records in the office of the State Engineer.

II.

The headwaters of Browns Creek drain from the northern slopes of Slide Mountain. Undiverted, the creek flows easterly down the Carson Range and becomes tributary to Steamboat Creek in Pleasant Valley. Midway in its course, Browns Creek receives water from a ditch conveying water from Galena Creek and a short distance downstream from the entry of this ditch water is diverted to Washoe Valley via the Browns Creek Ditch<sup>2</sup> whereafter it then flows into Washoe Lake. The limit and extent of the water rights to the use of water of Browns Creek have been adjudicated in the Browns Creek Decree<sup>2</sup> or after the water flows into Washoe Lake for storage, the rights are set forth in the Orr Ditch Decree.<sup>3</sup>

In the early 1900's, before the waters of the Truckee River and its tributaries or the water of Browns Creek were decreed, F.J. Sauer filed water right Application 3243 requesting the appropriation of the surplus and flood water from South Browns Creek.<sup>4</sup> The records of that permit file indicate that in the 1920's disputes were already arising as to interference with claims of vested water rights claimed by L.A.L. Green. The State Engineer by letter dated December 6, 1920, indicated to the

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<sup>2</sup> In the Matter of the Determination of the Relative Rights In and To the Waters of Browns Creek and Its Tributaries In Washoe County, State of Nevada, Second Judicial District Court of the State of Nevada, August 18, 1976, p. 6, official records in the office of the State Engineer.

<sup>3</sup> Final Decree, U.S. v. Orr Water Ditch Co., In Equity A-3 (D.Nev. 1944).

<sup>4</sup> Permit 3243, official records in the office of the State Engineer.

permittee that the permit had been issued subject to prior rights on the system and in particular, rights of storage in Washoe Lake and asked the permittee to cease diversion of water under Permit 3243 until the vested water rights were taken care of in Washoe Lake. L.A.L. Green's complaint of November 29, 1920, indicated that because of Sauer's diversions under the permit, Washoe Lake had not filled for the last two years and claimed there were no flood waters for use under Permit 3243 until the older reservoir at Washoe Lake was full. These records provide guidance as to why Browns Creek required an adjudication to determine the limit and extent of the rights to use the water from that creek and the other creeks in the area. As seen in the Browns Creek Decree and the Orr Ditch Decree, the valley had been settled since the mid-1800's and the farmers and ranchers of the area had established ways to use all the water they could from the creeks in the area.

The Orr Ditch Decree provides that the water rights to Washoe Lake Reservoir and its tributaries are held in the name of the Washoe Lake Reservoir and Galena Creek Ditch Company and that the unused and unappropriated water of Browns Creek are to go into the reservoir and be stored there. The remaining waters of Browns Creek are held as determined in the Browns Creek Decree. The State Engineer has previously held that any man-induced depletion of the inflow and outflow from Washoe or Little Washoe Lakes would adversely affect existing rights as well as adversely affect the public value of the Scripps Wildlife Management Area and recreational facilities in the lake shoreline area.<sup>5</sup> The State

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<sup>5</sup> State Engineer's Ruling No. 3201, dated June 5, 1985, official records in the office of the State Engineer.

Engineer finds there is no unappropriated water from Browns Creek to support Application 64025.

III.

Since the rights to use the waters of Browns Creek and the Truckee River and its tributaries have been adjudicated to water users other than the applicant, the State Engineer finds that approval of Application 64025 would interfere with and impair the value of those existing water rights and would threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>7</sup>

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

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<sup>6</sup> NRS Chapter 533.

<sup>7</sup> NRS § 533.370(3).

III.

The State Engineer concludes that the approval of Application 64025 would interfere with and impair the value of existing water rights and threaten to prove detrimental to the public interest.

RULING

Application 64025 is hereby denied on the grounds that to grant an application which requests a new appropriation of water from Browns Creek for irrigation purposes would impair the value of and interfere with existing rights and threaten to prove detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJT/cl

Dated this 9th day of  
September, 1999.