

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

IN THE MATTER OF APPLICATIONS 65729)
AND 65730 FILED TO CHANGE THE POINT)
OF DIVERSION, MANNER OF USE AND PLACE)
OF USE OF A PORTION OF THE WATERS OF)
GALENA CREEK HERETOFORE APPROPRIATED)
UNDER TRUCKEE RIVER DECREE CLAIMS 647,)
647½, 648, AND 649 WITHIN THE PLEASANT)
VALLEY HYDROGRAPHIC BASIN (88), WASHOE)
COUNTY, NEVADA.)

RULING
4965

GENERAL

I.

Application 65729 was filed on December 16, 1999, by Montreux Golf Club, Ltd. to change the point of diversion, manner of use and place of use of 0.77 cubic feet per second (cfs), not to exceed 137.10 acre feet annually, a portion of the waters of Galena Creek heretofore appropriated under Orr Ditch Decree Claims 647 and 648.¹ The proposed manner of use is for recreation (golf course irrigation) and domestic purposes within portions of Sections 2, 3, and 11, all in T.17N., R.19E., M.D.B.&M. The proposed points of diversion are described as being located within the SE¼ SE¼ of Section 3, T.17N., R.19E., M.D.B.&M. and the SE¼ SW¼ of Section 3, T.17N., R.19E., M.D.B.&M. The existing manner of use is for irrigation and stockwater purposes.²

II.

Application 65730 was filed on December 16, 1999 by Montreux Golf Club, Ltd. to change the point of diversion, manner of use and place of use of 2.02 cfs, not to exceed 332.07 acre feet annually, a portion of the waters of Galena Creek heretofore

¹Final Decree, US v. Orr Ditch Water Co., in Equity Docket A-3 (D. Nev. 1944) (hereinafter "Orr Ditch Decree").

²File No. 65729, official records in the office of the State Engineer.

appropriated under Orr Ditch Decree Claims 647½ and 649.³ The proposed manner of use is for recreation (golf course irrigation) and domestic purposes within portions of Section 2, 3, and 11, all in T.17N., R.19E., M.D.B.&M. The proposed points of diversion are described as being located within the SE¼ SE¼ of Section 3, T.17N., R.19E., M.D.B.&M., and SE¼ SW¼ of Section 3, T.17N., R.19E., M.D.B.&M.. The existing manner of use is for irrigation and stockwater purposes.⁴

III.

Both Applications 65729 and 65730 indicate under Item 15-Remarks that the total combined diversion rate at the Number 2 point of diversion (North diversion point) will not exceed 20 percent of the flow of Galena Creek nor 2.6 cfs at any time.

IV.

Applications 65729 and 65730 were timely protested by Joan Rivet, and James and Oline Colfer on the following grounds:⁵

1. On information and belief the Applicant caused, or otherwise was responsible for, modifications to Galena Creek immediately prior to a major flood event, such that the creek ceased to flow in its natural channel and assumed a new channel more favorable to Applicant, but more detrimental to Protestant in that the new channel caused, and continues to cause extensive flood damage to Protestants' property.
2. Upon information and belief, the Applicant is attempting to seek approval of the subject applications to legitimize its unlawful and unauthorized conduct that resulted in the modified channel.

³Final Decree, US v. Orr Ditch Water Co., in Equity Docket A-3 (D. Nev. 1944).

⁴File No. 65730, official records in the office of the State Engineer.

⁵ File Nos. 65729 and 65730, official records in the office of the State Engineer

3. The proposed applications seek to change points of diversion in a manner that is contrary to the terms of a 1994 Agreement by and between the Applicant, or its predecessor, and property owners including the Protestants. The terms of the subject agreement remain in full force and effect and act as a bar to approval of the subject applications.
4. Approval of the subject applications will, upon information and belief, result in the perpetuation and exacerbation of flooding damage to, and the loss of the use and enjoyment of, Protestants' property.

Therefore; the protestants requested that the applications be denied.

FINDINGS OF FACT

I.

Pursuant to Nevada Revised Statute § 533.365, it is within the State Engineer's discretion to determine whether an administrative hearing is necessary on a protested water right application. The State Engineer finds that a hearing is not necessary for a full understanding of the issues presented by the protests.

II.

The Orr Ditch Decree specifically allows persons who hold water rights adjudicated in said Decree to change the point of diversion, place and manner of use of said rights.⁶

III.

The State Engineer has no evidence or record that the protestants currently hold water rights on Galena Creek under the Orr Ditch Decree.

⁶ Final Decree, US v. Orr Ditch Water Co., in Equity Docket A-3 (D. Nev. 1944), p. 88.

IV.

The protestants allege that the applicant made modifications to Galena Creek that caused and continues to cause flood damage to the protestants' property and that these applications are to legitimize the applicants unlawful and unauthorized conduct. Records in the office of the State Engineer indicate that these applications are in furtherance of a flood restoration project which will repair some of the damage from the 1997 flood and to partially protect against future flood events⁷ and is supported by Washoe County and many of the residents along Galena Creek.⁸ The State Engineer finds the issue of whether actions taken by the applicant prior to the filing of these change applications damaged the protestants' property is a civil matter for resolution between them and is outside the scope of the State Engineer's jurisdiction.

V.

The State Engineer finds no evidence in these files as to a 1994 agreement and none was provided upon request.

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 a change application to appropriate the public waters where:¹⁰

- A. the proposed use conflicts with existing rights, or

⁷ File No. 65729, official records in the office of the State Engineer.

⁸ See 1999 Agreement File No. 65729, official records in the office of the State Engineer.

⁹ NRS chapter 533.

¹⁰ NRS § 533.370(3).

- B. the proposed use threatens to prove detrimental to the public interest.

III.

The State Engineer concludes the granting of Applications 65729 and 65730 will not conflict with existing rights or threaten to prove detrimental to the public interest.

IV.

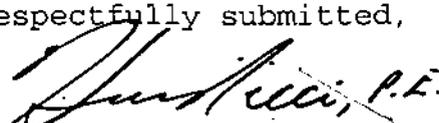
The State Engineer further concludes that the grounds for the protests have no merit in relation to the change applications at issue here and should be resolved outside the office of the State Engineer.

RULING

The protests to Applications 65729 and 65730 are hereby overruled and said applications are hereby approved subject to:

1. payment of statutory fees;
2. verification of ownership;
3. existing rights on the source;
4. no more than 20% will be diverted not more than 2.6 cfs at any time from point of diversion #2; and
5. continuing jurisdiction and regulation by the Federal Water Master.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/MLN/cl

Dated this 7th day of
September, 2000.