

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

IN THE MATTER OF APPLICATION 51925 )  
FILED TO CHANGE A PORTION OF THE )  
PUBLIC WATERS PREVIOUSLY APPROPRIATED )  
FROM THE WEST WALKER RIVER; APPLICATION )  
51926 FILED TO CHANGE A PORTION OF THE )  
PUBLIC WATERS OF AN UNDERGROUND SOURCE )  
PREVIOUSLY APPROPRIATED; AND )  
APPLICATION 51928 FILED TO CHANGE A )  
PORTION OF THE PUBLIC WATERS OF AN )  
UNDERGROUND SOURCE PREVIOUSLY )  
APPROPRIATED WITHIN THE SMITH VALLEY )  
HYDROGRAPHIC BASIN (107), )  
LYON COUNTY, NEVADA. )

RULING

# 5113

GENERAL

I.

Application 51925 was filed on March 16, 1988, by the Walker River Irrigation District (WRID) to change the point of diversion and place of use of 1.35 cubic feet per second (cfs), not to exceed 246.87 acre-feet annually (afa), a portion of the waters of the West Walker River previously appropriated under Permit 5528, Certificate 8859, for irrigation purposes. The point of diversion is described as being located at the reconstructed diversion point of the River Simpson Canal within the SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> of Section 2, T.10N., R.23E., M.D.B.&M. The proposed place of use is described as being 109.75 acres within 167.88 acres located within a portion of the SE<sup>1</sup>/<sub>4</sub> of Section 20, the W<sup>1</sup>/<sub>2</sub> SW<sup>1</sup>/<sub>4</sub> of Section 21, the NW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> of Section 28, and the N<sup>1</sup>/<sub>2</sub> NE<sup>1</sup>/<sub>4</sub> of Section 29, T.11N., R.24E., M.D.B.& M. The existing place of use under Permit 5528, Certificate 8859, is described as being 109.75 acres located within the NE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub>, and NW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> of Section 35, T.11N., R.23E., M.D.B.& M., and the SE<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> of Section 3, the NE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> of Section 10, the E<sup>1</sup>/<sub>2</sub> SW<sup>1</sup>/<sub>4</sub> of Section 20, and the E<sup>1</sup>/<sub>2</sub> NW<sup>1</sup>/<sub>4</sub> of Section 29, all in T.11N., R.24E., M.D.B.&M.<sup>1</sup>

<sup>1</sup> File No. 51925, official records in the Office of the State Engineer.

II.

Certificate 8859 was issued under Permit 5528 on October 15, 1976, to the WRID for 491.2 cfs, not to exceed 89,612 acre-feet per season (May 1 to July 31) from the West Walker River for irrigation of 30,000 acres within the boundaries of the Walker River Irrigation District. The water right granted under Certificate 8859 is for unappropriated, surplus, or flood water from the West Walker River which shall be allocated to users of the stream after the Chief Deputy Water Commissioner determines that there is more water available in the stream than is required to fill the rights of all of the vested users including the rights of the Walker River Irrigation District and others similarly situated to store water.<sup>2</sup> The point of diversion described under Certificate 8859 is at a point where the West Walker River crosses the Nevada-California state line. Exhibit B of Certificate 8859 gives the common location name of downstream diversion ditches and canals used for the distribution of water.<sup>3</sup>

III.

Application 51926 was filed on March 16, 1988, by F.M. Fulstone, Inc., to change the place of use of 1.5 cfs, not to exceed 671.52 afa, a portion of the underground waters previously appropriated under Permit 19734, Certificate 6434, for irrigation purposes. The point of diversion is described as being a well located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 2, T.10N., R.23E., M.D.B.& M. The proposed place of use is the same 167.88 acres as that described under Application 51925 above. The existing place of use

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<sup>2</sup> Order Approving Rules and Regulations for Distribution of Water on the Walker River System, U.S. v. Walker River Irrigation District, in Equity, Docket No. C-125, September 3, 1953.

<sup>3</sup> Permit 5528, Certificate 8859, and Proof of Beneficial Use Map, official records in the Office of the State Engineer.

is described as 167.88 acres located within portions of the N $\frac{1}{2}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , and NE $\frac{1}{4}$  of Section 35, T.11N., R.23E., M.D.B.&M.<sup>4</sup>

IV.

Corrected Certificate 6434 was issued under Permit 19734 on July 27, 1992, for 5.4 cfs, not to exceed 2,413.76 afa of underground water to irrigate 603.4 acres located within portions of the N $\frac{1}{2}$  of Section 2, T.10N., R.23E., and portions of Section 35, T.11N., R.23E., M.D.B.&M.<sup>5</sup>

V.

Application 51928 was filed on March 16, 1988, by F.M. Fulstone, Inc., to change the point of diversion and place of use of 0.07 cfs, a portion of the underground waters previously appropriated under Permit 12372, Certificate 3667, for irrigation purposes. The duty is not stated on the application but, 0.07 cfs continuously diverted from March 15 to October 31, being a 231 day irrigation season, is 32.07 acre-feet. The proposed point of diversion is described as being the same well as that described under Application 51926 located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 2, T.10N., R.23E., M.D.B. & M. The proposed place of use is described as being 50.87 acres within the 167.88 acres described as the entire proposed place of use under Applications 51925 and 51926. The existing place of use is described as 50.87 acres located within the N $\frac{1}{2}$  NW $\frac{1}{4}$  and NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 35, T.11N., R.23E., M.D.B. & M.<sup>6</sup>

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<sup>4</sup> File No. 51926, official records in the Office of the State Engineer.

<sup>5</sup> Permit 19734, Certificate 6434, and Proof of Beneficial Use Map, official records in the Office of the State Engineer.

<sup>6</sup> File No. 51928, official records in the Office of the State Engineer.

**VI.**

Certificate 3667 was issued under Permit 12372 on July 19, 1951, for 0.22 cfs, for an irrigation season from March 15 to October 31 of each year. The duty is not stated on the certificate but 0.22 cfs continuously diverted for the 231 day season is 100.8 acre-feet. The point of diversion is described as a well being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 35, T.11N., R.23E., M.D.B.&M. The place of use is described as 169 acres located within the NW $\frac{1}{4}$  and W $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 35, T.11N., R.23E., M.D.B.&M.

**VII.**

Information within the remarks section of Applications 51925, 51926, and 51928, state:

Water will be co-mingled with other ground water, storage and direct diversion rights and transported via the River Simpson Canal to the new place of use.<sup>1,4,6</sup>

**VIII.**

By letter dated May 18, 1988, the Walker River Irrigation District filed in the Office of the State Engineer comments on Applications 51925, 51926, and 51928, and requested the comments to be made part of and included in the file for each application. The comments are as follows:

Please be informed that the Walker River Irrigation District does not wish to protest the above-referenced applications. The Board of Directors do, however, ask that you consider the following comments in your review for the approval of the above applications. We ask that the following comments be made part of and be included in the file for each of the applications.

The applicant, R.N. Fulstone, has appeared before WRID and the U.S. Board of Water Commissioners regarding the proposed new place of use of the storage allocations, the flood water allocations under the name

<sup>7</sup> File No. 12372, Certificate 3667, and Proof of Beneficial Use Map, official records in the Office of the State Engineer.

of the District and the supplemental well water. Both boards have agreed that it is proper to transfer water from marginally producing low-lands to a higher, more suitable soil with increased expected capabilities of higher yields. The primary concern in doing so is that the three sources of water - storage, flood water, and underground water - are all transferred to the new place of use as a unit. To accomplish this, we suggest that your approval of the above applications coincide or be made subject to the transfer order by the Walker River Irrigation District for the storage water.

Secondly, as this water is transferred to a new place of use the land from which the water is transferred remains susceptible [sic] to continued use of water either from tail or drain water, the source of which would be the adjoining lands, higher in elevation. Because of the remote location of this land there will be no policing activity on behalf of the WRID nor the Water Master to prevent such things from happening. Therefore, if you find our suggestion suitable, we ask that you include in your approval a stipulation that this land shall no longer receive any water from any source and specifically that no primary underground or West Walker River water be applied to these lands. If that were to occur, it would have a negative impact on the existing decree on the Walker River system.

It is presumed that the new place of use will have a higher consumptive use requirement. The River Simpson Ditch will transport the waters to this land. There are presently all of the various types of water available - decree, storage, flood permit and underground water - within the River Simpson Ditch. Under the accepted rotation, exchange accumulation and combination practices, this proposed transfer may cause the gross diversion into the River Simpson Ditch to exceed that which is allowed. Therefore, please consider including a provision whereby the applicant is warned or cautioned that if that were to occur then the diversions into the River Simpson Ditch would be restricted to the annual duty of water.

Thank you for your consideration of our comments.<sup>1.4.6</sup>

FINDINGS OF FACT

I.

There are 512.4 acres under Permit 19734, Certificate 6434, within Section 35, T.11N., R.23E., M.D.B. & M.<sup>5,6</sup> and 614.02 acres under Permit 5528, Certificate 8859, within said Section 35,<sup>7</sup> and 169.0 acres in said Section 35 under Permit 12372, Certificate 3667<sup>7</sup>. In said Section 35, Applications 51925, 51926, and 51928, each propose to change the existing places of use of acreages in the differing amounts of 103.94, 167.55, and 50.87 acres respectively. The State Engineer finds that Applications 51925, 51926 and 51928 do not change proportional existing places of use under the base water rights within Section 35, T.11N., R.23E., M.D.B. & M. The State Engineer further finds that the proposed transfers are not as a single unit as recommended by the WRID and that supplemental acreages should be changed on a nearly one-for-one basis.

II.

Application 51925 proposes to change the existing place of use of a total of 109.75 acres, where a portion of the existing place of use in the amount of 5.81 acres is located within portions of Sections 3, 10, 20 and 29, T.11N., R.24E., M.D.B. & M.<sup>8</sup> under Permit 5528, Certificate 8859.<sup>1,4,\*</sup> The State Engineer finds that the 5.81 acres of the existing place of use under Application 51925 is not described in the existing places of use proposed to be changed under Applications 51926 and 51928. The State Engineer further finds that to approve applications which propose to strip unequal acreages from supplemental places of use would cause an expansion of acreage by allowing simultaneous irrigation on existing and proposed places of use, thus conflicting with existing rights and threatening to prove detrimental to the public interest.

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<sup>8</sup> Supporting maps for Applications 51925 through 51928, official records in the Office of the State Engineer.

III.

The proposed places of use of Applications 51925, 51926, and 51928 are within the same 167.88 acres of land.<sup>1,4,6,8</sup> The applications state that storage, direct diversion, and other groundwater rights will be transported to the proposed place of use via the River Simpson Canal, but the amounts of storage and direct diversion of Walker River water rights is not stated.

Storage water transfers within a river section can be requested by the holder of such a water right from the WRID throughout the irrigation season. WRID staff reviews the request for compliance using their guidelines and factors to determine if a transfer can be granted.<sup>9</sup> These types of transfers can cause a separation of supplemental storage and underground water rights wherein only one of the supplemental waters is transferred from the original place of use, which in effect is an expansion of acreage since previously supplemental waters will now be irrigating different acreages.

The type of transfer proposed under the subject applications would cause additional pumpage for those lands with underground water rights now lacking supplemental storage water. The State Engineer finds that the proposed and existing places of use of the applications do not have water rights under the Walker River Decree for direct diversion.<sup>1,3,4,5,6,7,9</sup> The State Engineer further finds that he cannot control nor ensure the union between supplemental storage and underground water rights since storage water can be separated and transferred without his knowledge.

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<sup>9</sup> Information In Regard to Storage Water Transfers, Walker River Irrigation District, received in the office of the State Engineer December 2, 1998.

IV.

Application 51925 proposes to change the place of use of surplus, or flood water granted under Permit 5528, Certificate 8859. Surplus or flood water is an irregular event because of the sporadic occurrence of necessary deep mountain snow pack followed by rapid snow melting conditions. Surplus or flood water is an uncertain and undependable source for irrigation because it is dependent upon irregular climatic conditions. Moreover, flood water is undependable because it is seasonal and under Certificate 8859 can only be diverted for a 92 day period of use from May 1 to July 31 each year. Flood water is only allocated after the Chief Deputy Water Commissioner has determined that there is more water available than required to fill the rights of all vested users.<sup>2,3</sup> In comparison, irrigation with decreed Walker River water has a 245 day period of use from March 1 to October 31 each year.<sup>2</sup> The State Engineer finds that he has no control of the storage water available from the Walker River Irrigation District, and that underground diversion will necessarily and inversely vary as the allocation of storage water to the proposed place of use. The State Engineer further finds that to approve a permit for an application to change an undependable source would threaten to prove detrimental to the public interest.

V.

The State Engineer's staff conducts an annual groundwater pumpage inventory of the groundwater rights within the Smith Valley Groundwater Basin. The amounts and types (decreed, storage and surplus) of water delivered to the various places of use for irrigation in Smith Valley by the Walker River Irrigation District vary from year to year, and currently there is not a readily available method to differentiate between flood and storage water delivered within the Basin. The State Engineer finds that he will not be able to determine the amount of flood and storage water delivered to the proposed places of use under Applications 51925,

51926 and 51928. Therefore, he will not be able to determine if the amount of groundwater pumpage is equitable or excessive, or if the welfare of the area will be threatened by overpumpage if permits are granted for Applications 51926 and 51928.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>10</sup>

#### II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:<sup>11</sup>

- A. the proposed use or change conflicts with existing rights;
- B. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- C. the proposed use or change threatens to prove detrimental to the public interest.

#### III.

A portion of the existing places of use under Applications 51925, 51926, and 51928 have water rights that are supplemental to each other. The State Engineer concludes that to issue permits where existing supplemental places of use are changed in different and unequal amounts would be an expansion of acreage, that would conflict with existing water rights, and threaten to prove detrimental to the public interest.

#### IV.

The State Engineer concludes that he has no control of floodwater, storage water, use of the River Simpson Canal, and use of any water controlled by the Walker River Irrigation District.

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<sup>10</sup> NRS chapters 533 and 534.

<sup>11</sup> NRS § 533.370(3).

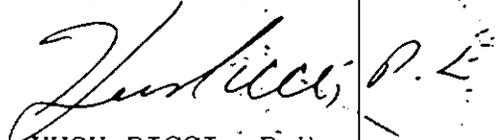
V.

The uncertainty of occurrence of floodwater creates an increasing dependence upon the reliable groundwater source. The State Engineer concludes that surplus or flood water are not a dependable supplemental source of water for the proposed project and that to issue a permit under Application 51925 for irrigation purposes would conflict with existing water rights and would threaten to prove detrimental to the public interest.

**RULING**

Applications 51925, 51926 and 51928 are hereby denied on the grounds that the granting of permits for these applications would cause an expansion of irrigated acreage, thereby increasing dependence on the underground water source, and thus conflict with existing rights and threaten to be detrimental to the public interest.

Respectfully submitted,

  
HUGH RICCI, P.E.  
State Engineer

HR/CB/jm

Dated this 8th day of  
March, 2002.