

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

IN THE MATTER OF APPLICATION 48743)
FILED TO CHANGE THE PLACE OF USE OF)
A PORTION OF THE PUBLIC WATERS OF)
THE TRUCKEE RIVER HERETOFORE)
APPROPRIATED UNDER TRUCKEE RIVER)
DECREE CLAIM NOS. 97 AND 97A,)
TRUCKEE CANYON HYDROGRAPHIC BASIN)
(091), WASHOE COUNTY, NEVADA.)

RULING

5180

GENERAL

I.

Application 48743 was filed on January 21, 1985, by the Belli Homeowners Association to change the place of use of 0.08 cubic feet per second, not to exceed 17.2 acre-feet per season, a portion of the waters of the Truckee River previously appropriated under Truckee River Decree Claim Nos. 97 and 97a. The proposed manner of use is for irrigation and domestic purposes within portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, all within T.19N., R.18E., 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 Section 16, T.19N., R.18E., M.D.B.&M.¹

FINDINGS OF FACT

I.

On August 30, 1985, a letter was sent to the applicant notifying it that the portion of Truckee River Decree Claim Nos. 97 and 97a, which Application 48743 requests to change did not show the applicant as an owner of record. The letter stated that before action could be taken on Application 48743, title must be brought up to date. The State Engineer finds that there is no record of a response to the request for a transfer of title.

¹ File No. 48743, official records in the Office of the State Engineer.

II.

On August 31, 1995, the State Engineer notified the applicant by certified mail that Truckee River Decree Claim Nos. 97 and 97a did not show the Belli Homeowners Association as owner of record of the portions requested to be changed by Application 48743. The letter requested the applicant to submit documentation to transfer these rights under Truckee River Decree Claim Nos. 97 and 97a into its name within thirty (30) days or the application may be denied. A receipt for the certified letter was received in the Office of the State Engineer from the applicant's agent. The letter to the Belli Homeowners Association was returned to the Office of the State Engineer by the U.S. Postal Service indicating "Attempted Not Known". The letter to the Belli Homeowners Association was re-sent by regular mail and again was returned with no forwarding address.^{1,2} The State Engineer finds that the applicant and its agent were properly notified of the need to demonstrate title to the relevant portion of Truckee River Claim Nos. 97 and 97a being changed by Application 48743.

III.

On January 5, 1998, a Report of Conveyance and supporting documentation were submitted changing ownership of Application 48743 from Belli Homeowners Association to Belli Ranch Estates Association.¹ The State Engineer finds that Application 48743 was assigned to the Belli Ranch Estates Association, but no other title information was provided assigning a portion of Truckee River Decree Claim Nos. 97 and 97a to the Belli Ranch Estates Association.

² File No. 48743, official records in the Office of the State Engineer.

IV.

On April 28, 1999, a certified letter was sent to the Belli Ranch Estates Association and copied to the agent that filed the Report of Conveyance referenced above. This letter indicated that records in the State Engineer's Office showed Washoe County as the owner of record of the portion of Truckee River Decree Claim Nos. 97 and 97a that Application 48743 proposed to change. The letter requested documentation to be submitted to show Belli Ranch Estates Association as the current owner of record under the appropriate portion of Truckee River Decree Claim Nos. 97 and 97a. The letter to the Belli Ranch Estates Association was returned by the U.S. Postal Service indicating "Forwarding Order Expired".² The State Engineer finds that the applicant and its agent were properly notified of the deficiencies in title regarding Application 48743.

V.

On May 10, 1999, a letter was received from Summit Engineering Corporation indicating that Summit Engineering had requested that Washoe County deed their portion of Truckee River Decree Claim Nos. 97 and 97a to the Belli Ranch Estates Association. The State Engineer finds that the Summit Engineering letter indicates transfer of title to the subject water rights went with the sale of the land at issue.^{1,2}

VI.

On May 3, 2001, a certified letter was sent to the Belli Ranch Estates Association and its agent indicating that the records in the State Engineer's Office still showed Washoe County as the owner of record of the portion of Truckee River Decree Claim Nos. 97 and 97a that Application 48743 proposed to change. The letter indicated that if no documentation was received within 60 days, to transfer title to Belli Ranch Estates Association, Application 48743 would be denied. Certified mail receipts were received in the Office of the State Engineer from the applicant

and its agent.^{1,2} The State Engineer finds that the applicant and its agent were properly notified of the request for documentation and were warned that failure to submit said documentation would result in denial of Application 48743.

VII.

On June 26, 2001, a letter was received from the applicant's agent requesting that Application 48743 be held in abeyance until all efforts to negotiate with Washoe County had been exhausted.¹ The State Engineer finds that no correspondence indicating a resolution to the title issue has been received in over one year.

VIII.

By letter dated December 20, 2001, the applicant requested approval of Applications 48742 and 48743.¹ By letter dated April 19, 2002, from the applicant indicated that they understood that all questions had been answered satisfactorily on Applications 48742 and 48743 and requested action on these applications.¹ The State Engineer's Office responded by mail on April 30, 2002, indication that to proceed with Application 48742, the applicant would have to request a reduced duty of 9.29 AFS. The applicant was also reminded that Washoe County was still the owner of record of the portion of Truckee River Decree Claims Nos. 97 and 97a that Application 48743 seeks to change and that the applicant had been told in a letter dated May 3, 2001, that they had 60 days to submit deeds showing they had title to this portion of Truckee River Decree Claims Nos. 97 and 97a.¹ In a letter dated May 17, 2002, the applicant's agent requested that Application 48742 be processed for 9.29 acre feet. The letter contained no comments with regard to Application 48743.¹ To date, no documentation has been submitted to transfer title from Washoe County to Belli Ranch Estates Association for the portion of Truckee River Decree Claim Nos. 97 and 97a that Application 48743 proposes to change.¹ The State Engineer finds that he can not consider a change application for approval until the owner of the

change application can demonstrate title to that portion of the underlying water right being changed.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting a permit for an application to change the public waters where:⁴

- 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 protectible 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.

The Summary of Ownership for Truckee River Decree Claim Nos. 97 and 97a shows Washoe County as the owner of record of the portion of the place of use to be changed by Application 48743. The State Engineer concludes that to approve an application to change water rights that the applicant does not own would threaten to prove detrimental to the public interest.

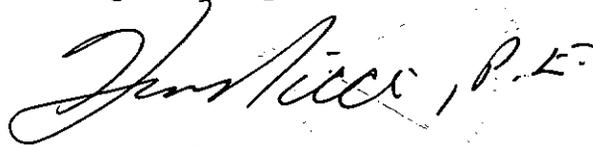
³ NRS chapter 533.

⁴ NRS § 533.370(3).

RULING

Application 48743 is hereby denied on the grounds that to issue this permit would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/KS/jm

Dated this 22nd day of
November, 2002.