

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

IN THE MATTER OF APPLICATIONS 68230)
68231, 68438 AND 68439 FILED TO)
APPROPRIATE THE WATERS OF ANDERSON)
SPRING 1, SPRING 2 AND SPRING 3 AND)
APPLICATION 69496 FILED TO CHANGE)
THE WATER OF ANDERSON SPRINGS)
LOCATED WITHIN THE WINNEMUCCA)
SEGMENT, HYDROGRAPHIC BASIN (70),)
HUMBOLDT COUNTY, NEVADA.)

RULING
#5500

GENERAL

I.

Application 68230 was filed on November 28, 2001, by Joseph Udovch to appropriate 0.0015 cubic feet per second (cfs) of water from Anderson Spring 1 for stockwatering purposes from January 1st to December 31st within the S½ S½ S½ NW¼ and N½ N½ SW¼ of Section 7, T.37N., R.41E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 3 of Section 7, T.37N., R.41E., M.D.B.&M.¹

II.

Application 68231 was filed on November 28, 2001, by Joseph Udovch to appropriate 0.0446 cfs of water from Anderson Spring 1 to irrigate 3.33 acres of land located within the S½ S½ S½ NW¼ and N½ N½ SW¼ of Section 7, T.37N., R.41E., M.D.B.&M. and for domestic purposes. The proposed point of diversion is described as being located within Lot 3 of Section 7, T.37N., R.41E., M.D.B.&M.² This application proposes to place the water to beneficial use from January 1st to December 31st.

III.

Application 68438 was filed on February 1, 2002, by Joseph Udovch to appropriate 0.0446 cfs of water from Anderson Spring 3 to irrigate 3.33 acres of land located within the S½ S½ S½ NW¼ and N½ N½ SW¼ of Section 7, T.37N., R.41E., M.D.B.&M. and for domestic purposes. The proposed point of diversion is described as being located within

¹ File No. 68230 official records in the Office of the State Engineer.

² File No. 68231 official records in the Office of the State Engineer.

Lot 4 of Section 7, T.37N., R.41E., M.D.B.&M.³ This application proposes to place the water to beneficial use from January 1st to December 31st.

IV.

Application 68439 was filed on February 1, 2002, by Joseph Udovch to appropriate 0.0446 cfs of water from Anderson Spring 2 to irrigate 3.34 acres of land located within the S $\frac{1}{2}$ S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 7, T.37N., R.41E., M.D.B.&M. and for domestic purposes. The proposed point of diversion is described as being located within Lot 3 of Section 7, T.37N., R.41E., M.D.B.&M.⁴ This application proposes to place the water to beneficial use from January 1st to December 31st.

V.

Application 69496 was filed January 22, 2003, by the Jack Fullenwider Family Trust to change the manner of use of a portion of the waters appropriated under Permit 2990, Certificate 2874. Application 69496 proposes to change the manner of use from April 1st to August 31st to January 1st to December 31st of 0.665 cfs for the irrigation of 66.36 acres located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ (2.46 acres), SE $\frac{1}{4}$ NE $\frac{1}{4}$ (36.07 acres) and NE $\frac{1}{4}$ SE $\frac{1}{4}$ (27.83 acres) of Section 12, T.37N., R.40E., M.D.B.&M.⁵

VI.

Applications 68230 and 68231 were protested by the Pershing County Water Conservation District on the grounds that the approval of the subject applications would adversely affect the water table, drainage and decreed waters of the Humboldt River and that the Winnemucca Hydrographic Basin is currently over appropriated.^{1,2} The Pershing County Water Conservation District requested that the State Engineer deny Applications 68230 and 68231.

VII.

The Jack Fullenwider Family Trust timely protested Applications 68230, 68231, 68438 and 68439 on the grounds that there is insufficient water at the source and requested that the State Engineer deny these applications.^{1,2,3,4}

³ File No. 68438 official records in the Office of the State Engineer.

⁴ File No. 68439 official records in the Office of the State Engineer.

⁵ File No. 69496 official records in the Office of the State Engineer.

VIII.

Permit 2990 was filed on June 1, 1914, by Jean Etchart Loge for the irrigation of 360 acres of land and domestic purposes. Certificate 2874 was issued on July 20, 1945, for 2.50 cfs of water from Anderson Springs for the irrigation of 249.52 acres of land located in the E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T.37N., R.40E., M.D.B.&M. and domestic purposes. The period of use for irrigation purposes issued on the certificate is from April 1st to August 31st. The points of diversion are described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.37N., R.41E., M.D.B.&M. The current owners of record are Jean Etchart Loge and Jack Fullenwider and Joy Fullenwider, Co-Trustees under the Jack Fullenwider Family Trust Agreement, in the amounts of 1.835 cfs, not to exceed 554.85 acre-feet per season (afs) for the irrigation of 183.16 acres and 0.665 cfs, not to exceed 201.15 afs for the irrigation of 66.36 acres, respectively.⁶ Nevada Revised Statute § 533.330 states that applications are limited to water of on source for one purpose, except that domestic use may be included. It is understood that domestic use does not cease at the end of the irrigation season but continues year round. The amount of water available for domestic purposes is limited to 1,800 gallons per day or 1.5 gallons per minute of continuous flow.

IX.

Joseph Udovch timely protested Application 69496 on the following grounds:

Applications 68230, 68231, 68438, and 68439 were filed prior to Application 69496 and seek to appropriate water during the same time of year as Application 69496. The Protestant's applications are senior in time to Application 69496 and have priority over 69496. Therefore, Protestant requests that Application 69496 be denied because there is no unappropriated water during the year.⁵

X.

Proof of Appropriation V-09404 was filed on October 8, 2003, by the Jack Fullenwider Family Trust; Jack and Joy Fullenwider claiming a historic water right for the irrigation of 66.36 acres in addition to domestic and stockwatering purposes from Anderson Springs. The place of use is described as being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$

⁶ File No. 2990 official records in the Office of the State Engineer.

NE¼ and NE¼ SE¼ of Section 12, T.37N., R.40E., M.D.B.&M. The priority date claimed for the initial use of Anderson Springs water is 1896.⁷

XI.

Proof of Appropriation V-09405 was filed on October 8, 2003, by the Jack Fullenwider Family Trust; Jack and Joy Fullenwider claiming a historic water right for stockwatering purposes from Anderson Springs. The period of use claimed is yearly for the watering of 88 cattle, 4600 sheep and 11 horses. The priority date for this use as stated in the remarks section is 1879.⁸

XII.

Proof of Appropriation V-09407 was filed on January 8, 2004, by the Jack Fullenwider Family Trust; Jack and Joy Fullenwider claiming a historic water right for the irrigation of 249.52 acres and domestic and stockwatering purposes from Anderson Springs. The place of use is the same as described under Permit 2990, Certificate 2784. The priority date claimed is 1881.⁹ The period of use claimed is yearly.

Proofs of Appropriation V-09404, V-09405 and V-09407 are unadjudicated claims of vested water rights to Anderson Springs, whose validity and extent will be determined at a later date.

Plat 1, which is attached to this ruling, delineates the place of use of Applications 68231, 68438 and 68439, Permit 2990, Certificate 2874, Application 69496 and Proof of Appropriations V-09404 and V09407 in addition to the private and public land ownership. At this time, 66.36 acres of certificated land under Permit 2990, Certificate 2874 are privately owned, the remaining 183.16 acres are controlled by the United States Department of Interior, Bureau of Land Management.

FINDINGS OF FACT

I.

Anderson Springs is a nesting of three springs located on the northeast side of the Winnemucca Segment Hydrographic Basin on the western side of the Osgood Mountain Range within Eden Valley. The springs flow in a northwesterly direction from the SW¼ of Section 7, T.37N., R.41E., M.D.B.&M. into the NE¼ SE¼ of Section 12, T.37N.,

⁷ Proof of Appropriation V-09404 official records in the Office of the State Engineer.

⁸ Proof of Appropriation V-09405 official records in the Office of the State Engineer.

⁹ Proof of Appropriation V-09407 official records in the Office of the State Engineer.

R.40E., M.D.B.&M. (Plat 2). The springs originate on Joseph Udovch's property and terminate on the Anderson property in a small storage reservoir (Plat 2). Spring 1 contributes the largest amount of water, which discharges from a small hand dug adit within the spring area. Most of the discharge is captured and piped to the ranch house for domestic and stockwatering purposes with the remainder of the flow discharged back into the stream channel and commingled with the flows from the other springs for storage in the upper reservoir to be used for irrigation purposes. The State Engineer finds that Permit 2990 is the entire spring source, which is comprised of Springs 1, 2 and 3 as filed on by Mr. Udovch.

The State Engineer further finds that during the irrigation season water under Permit 2990 may be stored in the reservoir and used after August 31st. However, the flow of water from the Springs after August 31st, under Permit 2290, must be allowed to flow either through the reservoir or the natural stream channel.

II.

When considering a protested water right application, the State Engineer may schedule and conduct a public hearing to acquire additional evidence and testimony regarding the applicant's and protestant's respective positions.¹⁰ Numerous field investigations have been conducted in an effort to determine the flow rates of the springs, investigate reports of alleged illegal use and to facilitate a resolution to the ongoing dispute between the property owners.

The first field investigation was conducted September 19, 2001, in response to a complaint by the Fullenwidlers to an alleged illegal diversion by Mr. Udovch. Steve Del Soldato, Water Commissioner, of the State Engineer's Winnemucca field office conducted the field investigation. Mr. Del Soldato's field report¹¹ indicates that Permit 2990; Certificate 2874 is the only water right appropriation on Anderson Springs. During his investigation he discovered a diversion of approximately two gallons per minute (gpm) flowing through a ¾ inch pipe to irrigate several small trees on Mr. Udovch's property (Humboldt County Assessor Parcel No. 007-161-66) for which there are no water rights. A flow measurement of 0.1338 cfs or 60.05 gpm was recorded from the springs.

¹⁰ NRS § 533.365.

¹¹ Field Investigation Anderson Spring, September 19, 2001, Steve Del Soldato, Water Commissioner, File Nos. 68230, 68231, 68438 and 68439 official records in the Office of the State Engineer.

Based on the findings of the field investigation conducted on September 19, 2001, specifically the lack of a valid water right, the State Engineer issued Order No. 1168 on November 20, 2001, ordering Mr. Udovch to cease and desist all diversions from Anderson Springs.¹²

On October 19, 2002, Mr. Del Soldato conducted a second field investigation of the water use at Anderson Springs, this time at the request of Mr. Udovch. Mr. Udovch alleged that the Fullenwidlers were irrigating a crop after August 31st, which is the last day to irrigate under the seasonal duty granted under Certificate 2784. Mr. Del Soldato stated in his field report that no crop was being irrigated at the time, just the irrigation of the front yard, which he states is included in domestic use.¹³

At the request of Mr. Udovch, Steve Walmsley and Dan Taylor, staff of the State Engineer's office conducted an informal field investigation on July 21, 2003. A Report of Field Investigation was prepared and transmitted to Mr. Udovch describing what the investigators observed. A flow measurement was made using a 90° V-Notch weir below the confluence of all the springs and was reported as 0.072 cfs (32.3gpm). According to the investigators the amount of irrigation occurring was a small portion of the certificated place of use under Certificate 2874.^{1,2,3,4}

On December 17, 2003, again at the request of Mr. Udovch, a fourth informal field investigation was conducted. The last visit to the site was a formal field investigation conducted on February 3, 2004. Those present at the formal field investigation were Joseph Udovch, Linda Udovch, Dallas Udovch, John Milton, representing Mr. Udovch, Joy Fullenwider and Clyde Wyland, representing the State Engineer were Tracy Taylor, Jason King, Steve Del Soldato and Kelvin Hickenbottom. Report of Field Investigation No. 1052 was prepared summarizing the information collected on the December 17, 2003, and February 3, 2004, field investigations.¹⁴ Flow measurements were taken on both visits and were reported as 47.5 gpm (0.106 cfs) and 56.1 gpm (0.125 cfs), respectively. The State Engineer finds that in the case of protested Applications 68230, 68231, 68438 and 68439, there is sufficient information contained within the records of the Office of the

¹² State Engineer's Order No. 1168 official records in the Office of the State Engineer.

¹³ Field Investigation, October 24, 2002, Steve Del Soldato, Water Commissioner, File Nos. 68230, 68231, 68438 and 68439 official records in the Office of the State Engineer.

¹⁴ Report of Field Investigation No. 1052, official records in the Office of the State Engineer.

State Engineer to gain a full understanding of the issues and a hearing in this matter is not required.

III.

Four informal field investigations and one formal field investigation were conducted by staff of the Office of the State Engineer in an effort to determine the yield from the springs, to determine the impact of granting any additional water rights to existing water rights and determine if any illegal use of water was occurring. The State Engineer finds that based on the records of this office, the data collected and the observations made during each of the field investigations that there is no additional water available from Anderson Springs for the period of April 1st to August 31st to support any new irrigation, stockwater or domestic use.^{11,12,13,14} The State Engineer further finds that during the period from September 1st to March 31st, there is sufficient water for stockwater and domestic use from Anderson Springs.

IV.

Recent flow measurements of Anderson Springs have been made by staff of the State Engineer's office in accordance with standard practice and have recorded flow rates of 0.1338 cfs, 0.072 cfs, 0.106 cfs and 0.125 cfs from field investigations from September 2001 to February 2004. The State Engineer finds that the granting of permits under Applications 68230, 68231, 68438 and 68439 would result in the withdrawal of an additional 0.1353 cfs under junior priorities from a water source that has been measured at a maximum of 0.1338 cfs (60.05gpm) in recent years. The State Engineer finds that based on the data collected a sufficient diversion rate and volume of water from this spring source is not available to satisfy the existing permitted use plus the additional water requested under Applications 68230, 68231, 68438 and 68439 during the irrigation season from April 1st to August 31st.

V.

The State Engineer finds that the approval of any permits to appropriate additional water from the Anderson Spring area from April 1st to August 31st would conflict with the rights of the existing water right holder on the source.

VI.

The State Engineer finds that the granting of any additional permits to appropriate water from the Anderson Springs area would not have an adverse impact on the groundwater table, would not be an additional appropriation of the Winnemucca Segment's groundwater source, and that its flows are not tributary to the Humboldt River. The State Engineer finds that the Pershing County Conservation district's protest has no merit and is herewith overruled.

VII.

Application 69496 was filed by the Jack Fullenwider Family Trust to change the manner of use of a portion of Permit 2990. This change application is requesting a change from seasonal use, April 1st to August 31st, to annual use, January 1st to December 31st. The State Engineer finds that this application is changing water already appropriated for domestic use that would have been historically used year round.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁵

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:¹⁶

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change would conflict with existing rights;
- C. the proposed use or change conflicts with protectible interests in 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.

Flow measurements of the discharge from the springs have been made at various times of the year from September 2001 to February 2004. The flows recorded ranged from 0.072 cfs to 0.1338 cfs. Staff of the State Engineer's office using standard streamflow

¹⁵ NRS § chapter 533.

¹⁶ NRS § 533.370(4).

methods and procedures made the measurements. Based on the data collected, none of the flows recorded are sufficient to satisfy the water required to meet the demands of Permit 2990, Certificate 2874 from April 1st to August 31st, let alone any additional request for water during the irrigation season. The State Engineer concludes that there are insufficient flows from Anderson Springs to accommodate any additional appropriations from April 1st to August 31st. The State Engineer further concludes that there is unappropriated water for stockwatering and domestic purposes from September 1st to March 31st. However, to grant any new appropriations from April 1st to August 31st would conflict with existing rights.

The State Engineer further concludes that Application 69496 does not increase the duty of water already appropriated, thus does not place an additional burden on the source.

VI.

The State Engineer concludes that the approval of an additional appropriation for irrigation of water from this spring area would conflict with and adversely affect existing rights and threaten to prove detrimental to the public interest.

RULING

The protests to Application 68230 are hereby overruled and Application 68230 is granted subject to the following conditions:

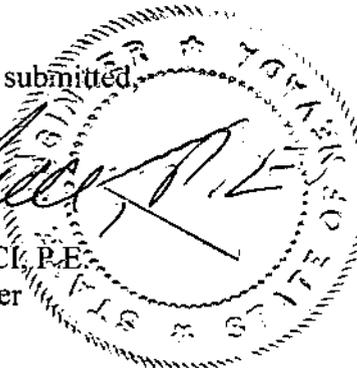
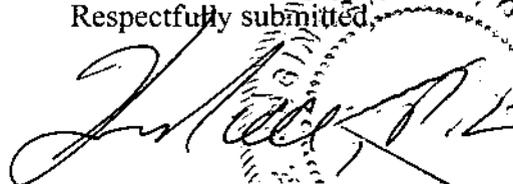
1. Payment of statutory fees;
2. The period of use will be from September 1st to March 31st of each year;
3. The amount of water to be diverted will be limited to 0.0009 cubic feet per second (\approx 0.5 gpm) from Anderson Spring 1 or sufficient to water 30 head of stock.;
4. The installation of a measuring device on Anderson Spring 1, which will be reviewed by this office at the time of filing the Proof of Completion; and
5. The issuance of this permit is subject to existing rights on the source.

The protests to Applications 68231, 68438 and 68439 are upheld and Applications 68231, 68438 and 68439 are hereby denied on the grounds that there is no unappropriated water at the source during the irrigation season, the issuance would conflict with existing rights and would prove detrimental to the public interest.

The protest to Application 69496 is hereby overruled and Application 69496 is hereby approved for domestic purposes only. The manner of use change from seasonal irrigation to annual irrigation is hereby denied subject to the following conditions:

1. Payment of the statutory fees;
2. The installation of a measuring device to measure the domestic use, which must be installed prior to April 1, 2006;
3. The irrigation of 66.36 acres from April 1st – August 31st of each year; and
4. The amount of water to be diverted for domestic use will be limited to 0.003 cfs (≈ 1.25 gpm).

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

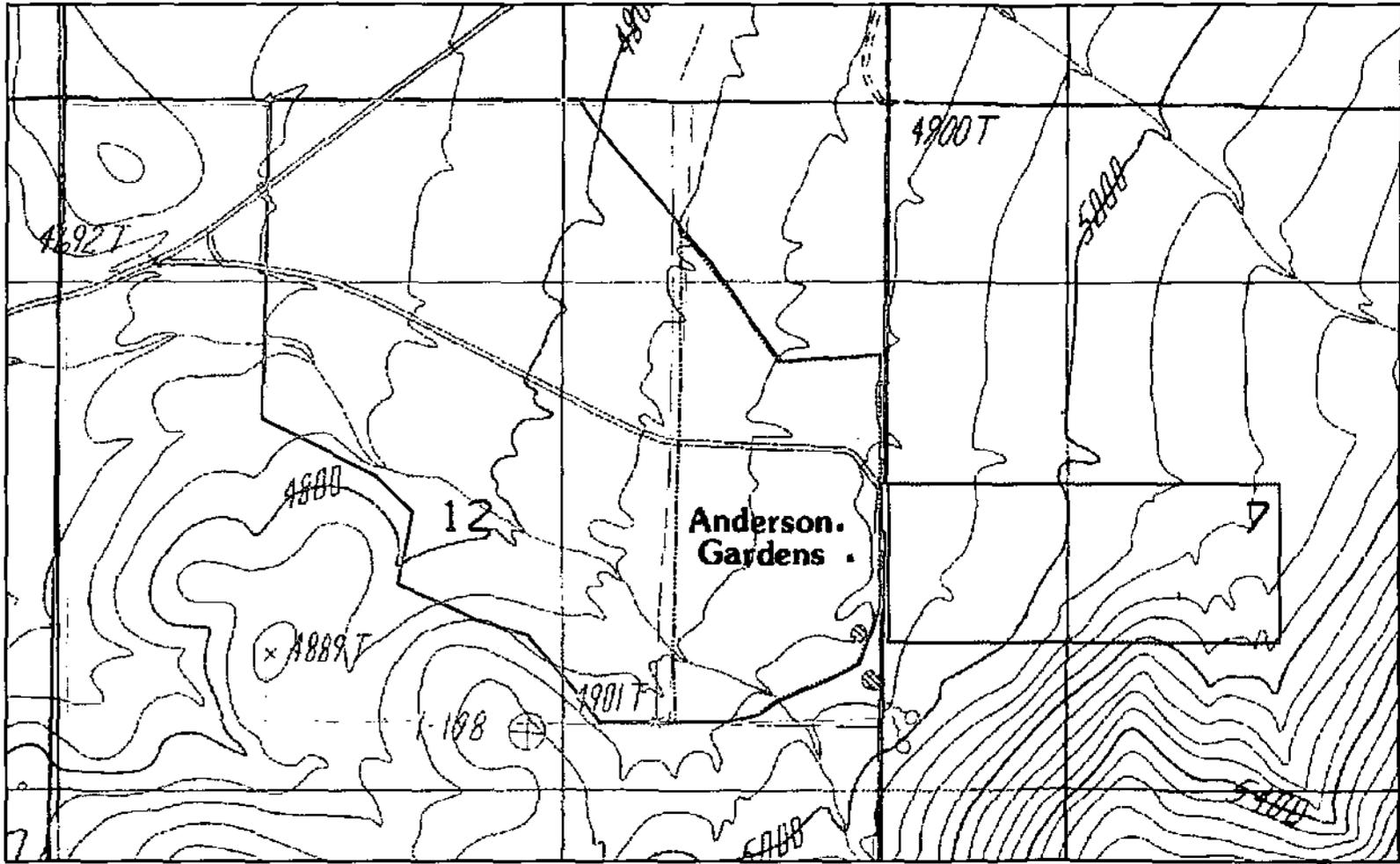
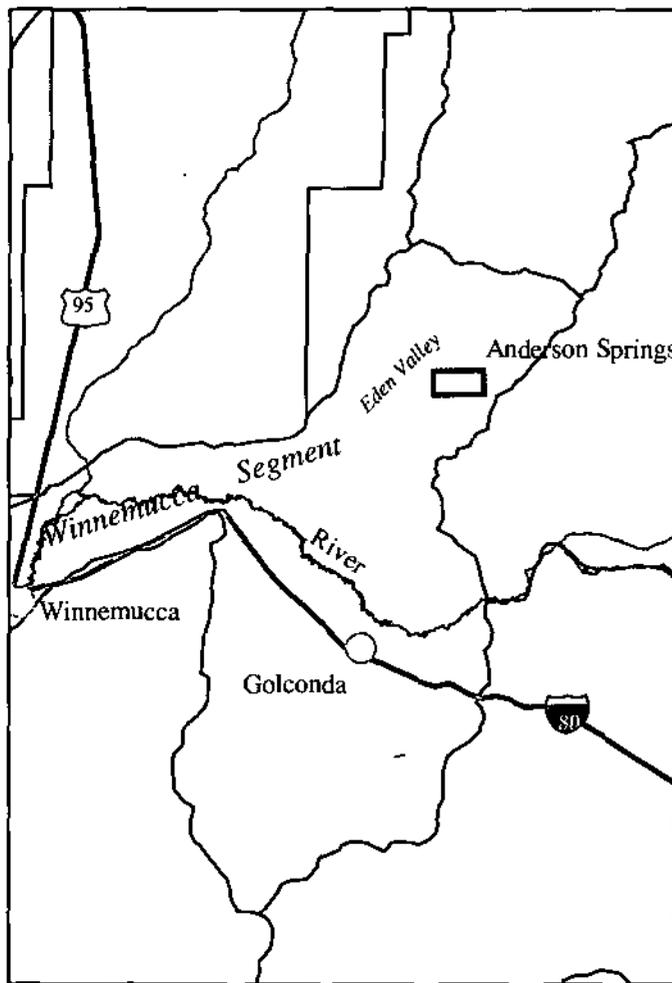
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Dated this 8th day

of August, 2005.

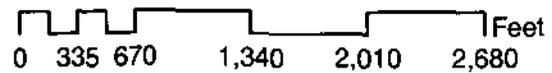
Location Map

Place of Use of File Nos. 2990, 68230, 68231, 68438, 68439, 69496 and Proofs of Appropriation V-09404 and V-09407



-  File No. 2990 and V-09407
-  File No. 69496 and V-09404
-  File Nos. 68230, 68231, 68438 and 68439

-  Bureau of Land Management Lands
-  Private Lands



PLAT 1

Points of Diversion

Files Nos. 2990, 68230, 68231, 68438, 68439

