

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

IN THE MATTER OF APPLICATIONS )  
69840 AND 70163 FILED TO CHANGE THE )  
POINT OF DIVERSION OF A PORTION OF )  
THE WATERS OF THE HUMBOLDT )  
RIVER, WITHIN THE STARR VALLEY )  
AREA HYDROGRAPHIC BASIN (43), )  
ELKO COUNTY, NEVADA. )

**RULING**

**# 5893**

**GENERAL**

**I.**

Application 69840 was filed on April 10, 2003, by Jill Leslie Oswalt to change the point of diversion of 0.223 cubic feet per second (cfs), not to exceed 54.342 acre-feet annually (afa), a portion of the waters of the Humboldt River, Edwards Decree, Proof 00512.<sup>1</sup> The proposed point of diversion is described as being located on Ackler Creek NE¼ NE¼ Lot 1 of Section 15, T.36N., R.60E., M.D.B.&M. The existing manner of use is as decreed.<sup>2</sup>

**II.**

Application 70163 was filed on June 30, 2003, by James D. Currivan to change the point of diversion of up to 1.139 cfs (277.5 acre-feet) on 92.5 acres [on “bracketed” lands], a portion of the waters of the Humboldt River, Edwards Decree, Proof 00507.<sup>1</sup> The proposed point of diversion is described as being located within Lot 1 of Section 15, T.36N., R.60E., M.D.B.&M. The existing manner of use is as decreed.<sup>3</sup>

**III.**

Application 69840 was timely protested by James D. Currivan and Theresa L. Currivan. The Protestant requested that the application be denied due to the fact that the new point of diversion coincides with the one used by the Protestant and the head gate of the Protestant.

---

<sup>1</sup> *In the Matter of Determination of the Relative Rights of the Waters of the Humboldt River System and Tributaries*, Case No. 2804, Sixth Judicial District Court, State of Nevada, In and for the County of Humboldt, 1923-1938.

<sup>2</sup> File No. 69840, official records in the Office of the State Engineer.

<sup>3</sup> File No. 70163, official records in the Office of the State Engineer.

## **FINDINGS OF FACT**

### **I.**

In November of 2002, Ms. Oswalt installed a steel catch basin box and a control valve near the existing point of diversion on Ackler Creek. A one-foot diameter plastic pipe was connected to this catch basin and runs the entire length of the ditch.<sup>4</sup>

### **II.**

In a letter to the State Engineer dated November 22, 2002, James D. Currivan asked for a formal Field Inspection and Field Report regarding Ms. Oswalt's use of a point of diversion on Ackler Creek in Section 10 and 15, T.36N., R.60E., M.D.B.&M. Mr. Currivan also asked the State Engineer to determine the legality of a pipeline installed in the ditch by Ms. Oswalt, which for the first mile is on his property and was installed without his permission. The State Engineer finds that no change in point of diversion has been performed prior to the issuance of a permit, and that the issue of the pipe on the Protestants property is a civil matter because the State Engineer has no authority downstream of the point of diversion.

### **III.**

On December 2, 2002, Kirk Owsley, Supervising Water Commissioner for the Humboldt River, along with Roger Ghrist and Willis Hyde, performed a field investigation. A one-foot diameter pipe was found in place in the ditch, but no work had been done on the point of diversion. The point of diversion was still in the same place. Mr. Owsley stated that Mr. Currivan's water could still travel down the ditch even with the pipe in place. Mr. Owsley also stated that there has always been a problem with the two natural draws that intersect this ditch in Section 10. The two draws need to be piped through the ditch because, if they are left as they are, an early flash of water could come down and wash out the ditch, which has occurred in the past. In his field investigation, Mr. Owsley recommended that both parties use the pipeline to transport their water to their place of use. The State Engineer finds that if the pipeline were used, the issue of the two natural draws in Section 10 would be eliminated.<sup>3</sup>

---

<sup>4</sup> Informal Field Investigation, November 12, 2002, File No. 70163, official records in the Office of the State Engineer.

#### IV.

Mr. Owsley performed a field investigation on August 11, 2006. According to his report Ms. Oswalt and the Currivans use the existing point of diversion and have shared this point of diversion for at least the last 15 years. Since the installation of the pipeline by Ms. Oswalt, there has been a problem with the diversion of water. With the catch basin box in the ditch the water now goes to the catch basin box and then overflows into the ditch. In Mr. Owsley's opinion, each user should install their own head gate for proper regulation of their water and each user should install a measuring device in the ditch as ordered by the Humboldt Decree. The State Engineer finds that individual head gates and measuring devices are necessary for the regulation of the water. The Applicants under Applications 69840 and 70163 are ordered to install individual head gates and measuring devices, the location and type to be approved by the water commissioner prior to any permit being issued.

#### CONCLUSIONS

##### I.

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

##### II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>5</sup>

- 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 State Engineer concludes the granting of Application 69840 and 70163, will not conflict with existing rights or threaten to prove detrimental to the public interest.

---

<sup>5</sup> NRS § 533.370(5).

**IV.**

The State Engineer concludes that the installation of the pipeline in the ditch is considered a civil matter and is not within his jurisdiction.

**RULING**

The protest to Application 69840 is hereby overruled and Applications 69840 and 70163 are hereby approved subject to:

1. payment of statutory fees;
3. existing rights on the source;
4. installation of individual head gates and measuring devices, the location and type to be approved by the water commissioner ; and
5. continuing jurisdiction and regulation by the water commissioner

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/JDT/jm

Dated this 26th day of  
September, 2008.