

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

IN THE MATTER OF TEMPORARY)
APPLICATION 60919-T FILED TO)
CHANGE THE POINT OF DIVERSION)
OF THE WATERS OF THE HUMBOLDT)
RIVER PREVIOUSLY APPROPRIATED)
UNDER HUMBOLDT RIVER DECREE)
CLAIM 00482 WITHIN THE STARR)
VALLEY HYDROGRAPHIC BASIN (43),)
ELKO COUNTY, NEVADA.)

RULING
5116

GENERAL

I.

Temporary Application 60919-T was filed on February 13, 1995, by Harvey A. and Margaret E. Dahl to change the point of diversion of the waters of Boulder Creek, heretofore decreed under a portion of Claim 00482 of the Edwards Decree of the Humboldt River adjudication. The decreed point of diversion is the point of the beginning of the Armstrong Ditches 1 through 6 from Boulder Creek, located within the NE $\frac{1}{4}$ of Section 25, T.36N., R.59E., M.D.B.&M. The proposed point of diversion is the point of intersection of the Carlson Ditch and Left Boulder Creek in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T.36N., R.60E., M.D.B.&M. The applicants propose to irrigate decreed lands within the N $\frac{1}{2}$ of said Section 30, which cannot presently receive water from the decreed point of diversion.¹

FINDINGS OF FACT

I.

Under the provisions found within the Nevada Revised Statute §533.345, a person may request a temporary change in the point of diversion of an existing water right that is considered to be in

¹ File No. 60919-T, official records in the Office of the State Engineer.

good standing in the Office of the State Engineer. The intent of the temporary change application is to provide the public with a mechanism, which provides a quick, but temporary solution to water allocation and distribution problems. Under the proper circumstances, the State Engineer will allow a temporary change application to be submitted while an application that requests an identical permanent change is being considered for approval. On September 6, 1994, Application 60426 was filed by Harvey A. and Margaret E. Dahl requesting a permanent change in the point of diversion of Humboldt River Decree Claim 00482.² The State Engineer finds that this permanent request for a change in the point of diversion of Humboldt River Decree Claim 00482 is identical to the temporary change proposed under Application 60919-T.

II.

Application 60426 was denied by State Engineer's Ruling Number 4270, which was issued on December 21, 1995.³ No appeal of this decision was submitted to the proper court; therefore, Application 60426 remains denied. The State Engineer finds that the findings of fact and conclusions formulated in denying the permanent change requested under Application 60426 can be directly applied to the temporary change requested under Application 60919-T.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

² File Number 60426, official records in the Office of the State Engineer.

³ State Engineer's Ruling 4270, official records in the Office of the State Engineer.

⁴ NRS chapter 533.

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:⁵

- A. the proposed use or change conflicts with existing rights;
- B. the proposed use or change conflicts with protectible interests in 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.

Application 60919-T requests a temporary change in the point of diversion of Humboldt River Decree Claim 00482. An identical permanent change of this decreed water right, represented by Application 60426, was denied by the State Engineer on the grounds that the application did not contain enough information for a full understanding of the proposed change and that its approval would conflict with existing rights, threaten to prove detrimental to the public interest, and violate the terms and conditions of the Humboldt River Decree. The State Engineer concludes that the grounds for denial set forth by State Engineer's Ruling Number 4270 can be fully applied to any consideration of Application 60919-T for denial.

IV.

Application 60426 and Application 60919-T share a common request for a change of an existing decreed water right, which was rejected by the State Engineer with the denial of Application 60426. The State Engineer concludes that to approve a temporary change application for an identical request that has been previously denied would threaten to prove detrimental to the public interest.

⁵ NRS § 533.370(3).

RULING

Application 60919-T is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Hugh Ricci, P.E.", is written over a faint circular official seal.

HUGH RICCI, P.E.
State Engineer

HR/MB/jm

Dated this 22nd day of
April, 2002.