

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

IN THE MATTER OF APPLICATION 49605 )  
FILED TO CHANGE THE PLACE OF USE OF )  
WATER PREVIOUSLY APPROPRIATED UNDER )  
CLAIM NO. 00459 OF THE HUMBOLDT )  
RIVER DECREE, LAMOILLE VALLEY (045) )  
HYDROGRAPHIC BASIN ELKO COUNTY, )  
NEVADA. )

**RULING**

**#5314**

**GENERAL**

**I.**

Application 49605 was filed on December 30, 1985, by Joseph B. Key to change the place of use of 3.438 cubic feet per second (cfs) of the waters from Rabbit Creek, Lamoille Creek and springs, heretofore decreed under a portion of Claim No. 00459 of the Edwards Decree of the Humboldt River Adjudication (Claim No. 00459). The decreed point of diversion of the Lamoille Creek portion of Claim No. 00459 is the point of beginning of the Juett Ditch which is described as being within Lot 2, of Section 6, T.32N., R.58E., M.D.B.&M. The Rabbit Creek and springs points of diversion are as decreed. The proposed manner of use is for the irrigation of 279.42 acres of land of which 138.56 acres would be supplemental to the acreage established under Claim No. 00453 of the Humboldt River Decree.<sup>1</sup>

**II.**

Albert C. and Dolores D. Jones; Salicchi Ranches, a partnership and Alfred J. Salicchi, Ceasar E. Salicchi and Giuliana Murphy (Salicchi Ranches); Marilyn C. Tipton; Otis Tipton, III; Dennis Lipparelli; William D. and Jan Wagner; George Knezevich; Laura Murdock; Shirley Mensink; Dennis W. Mensink; Jack L. Goad; Fred and Charlotte Paschall; Steve Parker; and Kelly H. Parker; timely protested Application 49605.<sup>1</sup>

Salicchi Ranches protested Application 49605 on the following grounds:

1. Protestants own, among others, the lands and water rights described or referred to in Schedule I to

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<sup>1</sup> File No. 49605, official record in the Office of the State Engineer.

- this Exhibit "A" attached hereto as part hereof consisting of 9 pages.
2. Protestants are informed and believe that the Applicant is claiming 279.42 acres, 3.438 cfs of the following decreed water rights and attempting to change their place of use:
    - a. Those water rights decreed to Albert Trescartes out of Lamoille Creek, page 62 of the Edwards Decree, Proof No. 00459; and
    - b. Those water rights decreed to Albert Trescartes out of Rabbit Creek, Little Rabbit Creek, and Swamps and Springs, page 63 of the Edwards Decree, Proof No. 00459; and
    - c. Those water rights decreed to Albert Trescartes out of Lamoille Creek, page 103 of the Edwards Decree, Proof No. 00459.  
LESS the following water rights owned by others in those decreed rights:  
Parker - 5 acres  
Goad - 8 acres  
Mensink - 7 acres  
Knezevich - 20 acres  
Protestants allege that the Edwards Decree required the Albert Trescartes water rights out of Lamoille Creek be flumed over Rabbit Creek and not placed in that natural creek or mixed with those waters and that the application conflicts with the provisions of the decree.
  3. Protestants are informed and believe that if the application is granted, a majority of the waters of Little Rabbit Creek will be dried up where it passes through Pleasant Valley taking the waters from Little Rabbit Creek water, swamps and springs which are a portion of the source for Little Rabbit Creek and putting those into Rabbit Creek thereby adversely affecting the water rights of the Protestants out of Little Rabbit Creek by reduction of the normal flow. Protestants are informed and believe that a portion of the water rights from the swamps, springs and wastewater which are a source of Little Rabbit Creek are appurtenant to lands owned by parties other than the Applicant.
  4. Protestants are informed and believe that if the application is granted this will increase the flow in Rabbit Creek and will change this stabilized, natural creek to the damage of the creek and the owners of water rights out of Rabbit Creek and Little Rabbit Creek. Increasing the flow in Rabbit Creek will place an additional burden on the Salicchi private lands through which Rabbit Creek flows and will cause damage to the Protestants' water rights, lands, diversions and ditch systems.

5. The Applicant has not acquired any ditch or diversion rights in the lands owned by Protestants for such additional water transmission and has no easement or other right to use the Protestants' lands for the transmission, diversion and use of the Albert Trescartes water rights now claimed by Applicant.
6. If Applicant's application is granted it will cause water from Lamoille Creek to travel further down Rabbit Creek to its place of use resulting in additional ditch loss, overburdening of the natural stream banks of Rabbit Creek and will possibly require Protestants to reconstruct and disturb their existing diversions, dams and ditches without compensation from the Applicant.
7. Protestants are informed and believe that granting of the application will require additional administrative management by and expense to the Water Resources Division of the State of Nevada, which management and expense will be necessary to properly administer the water and should be paid by Applicant without contribution from Protestants or other water users.
8. The required elimination of the place of use from Little Rabbit Creek Swamp and Spring would adversely affect Protestants' decreed use from that same source under Proof No. 00411 and Proof No. 00462.
9. Approval of the application would result in intermixing the Lamoille Creek system with the Rabbit Creek system and adversely affect historical stream flows.
10. Additional constant flow during the season of use in Rabbit Creek would place a burden upon the lands of the Protestants through which Rabbit Creek flows.
11. The point of diversion from Rabbit Creek to be used by Applicant to divert the waters the subject of the application and some ditches necessary for use are located upon Protestants' land and would place an additional burden upon said land due to additional use. Applicant has no legal rights in Protestants' lands for the diversion or ditches for the additional water and change of place of use.
12. Applicant does not control lands which are the source of waters from Little Rabbit Creek, Swamps and Springs and cannot effectively control those waters at the source in order to eliminate the presently decreed place of use.
13. Granting of the application will result in mixing the Lamoille Creek and Rabbit Creek drainages and taking the water use and return flow out of the Little Rabbit Creek drainage and placing it in the Rabbit Creek drainage to the detriment and damage of the users of Little Rabbit Creek drainage and water sources.

14. The Humboldt water system has been totally adjudicated and decreed and granting of the application will increase ditch loss which should be subtracted from the water rights available for the Applicant should the application be granted at the point of diversion from Rabbit Creek.
15. Protestants are informed and believe that the Applicant is diverting water that historically and normally became part of the flow of Little Rabbit Creek and storing it in a reservoir constructed by Applicant in a manner which takes it out of the flow of Little Rabbit Creek. This adversely affects the water rights of Protestants out of Little Rabbit Creek.

Salichhi Ranches requested that the State Engineer deny the Application 49605.

Marilyn C. Tipton protested Application 49605 on the following grounds:

Dam location is below the acreage the applicant claims to be irrigating. The Creek was diverted from natural green belt area which provided irrigation to applicant's meadow land to form dam. Dam is fenced from livestock and provides no irrigation below dam site. Dam is situated next to applicant's residence and is being utilized as an extravagant duck pond. Because of the immense size of the dam a large proportion of water is lost to evaporation during hot summer months. Dam does not have proper foundation to prevent ground saturation. Protestant is already [sic] irrigating below the dam site and if dam is allowed to remain there will be insufficient water for irrigation.

Marilyn C. Tipton requested that the State Engineer deny Application 49605 and that the dam be torn down.

Otis W. Tipton, III, protested Application 49605 on the following grounds:<sup>1</sup>

If application is granted applicant will control water on rabbit creek and its tributaries [sic] one of which is Stoffer Creek. Applicant would control all water on stoffer creek and the water users down below would be denied necessary irrigation and stock water. Protestant feels that applicant has filed under false pretense. Applicant did not file for additional water until after protestant lodged a formal protest against applicant's illegal dam; which is not used for irrigation or stock water. Protestant has water rights under proof 00370 and is presently using water from a

Rabbit Creek tributary for irrigation purposes. If application is granted there will be insufficient water not only for irrigation but other water users down below which depend on this creek for stock water. If applicant is sincere about irrigating then why did he divert stoffer creek which irrigated his meadow land into a duck pond at the lower portion of his property. Applicant is not a full time resident of this region therefore it is doubtfull [sic] he would be irrigating as stated. Since the illegal dam is once again filled to its capacity it is the belief that applicant wishes to obtain water rights to forestall further protests against his dam.<sup>2</sup>

Otis W. Tipton, III, requested that the State Engineer deny Application 49605.

Dennis Lipparelli protested Application 49605 on the following grounds:

Applicant is applying for water under proof 00453, in which case would give him complete control over stoffer creek (a contributory [sic] to Rabbit Creek). This would leave the people with water rights below applicant at the mercy of applicant's discretion of water use, and could deny any water down below. As a water owner under proof 00370 this would have a great impact on the natural green belt area below and lower the property value.

Dennis Lipparelli requested that the State Engineer deny Application 49605.

William D. and Jan Wagner protested Application 49605 on the following grounds:

Dam location is below the acreage applicant claims to be irrigating. The creek was diverted from natural green belt area which provided irrigation to applicant's land to form dam. Dam is fenced from livestock and provideds [sic] no irrigation below the dan [sic] site. Dam is situated next to applicant's residence and is being utilized as an extravagant duck pond. Because of the immense size of the dam a large proportion of water is lost to exaporation [sic] during hotsummer [sic] months. Dam does not have proper foundation to prevent ground saturation. Protestant is already irrigating and watering cattle and horses below the dam site. If dam is allowed to remain there will

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<sup>2</sup> Attached to the official protest is a note that indicates, "The property in question is Section 26 T33 R57E, which is the same description for Permit No 2145 Cecilo Larrondo Dated 1911 (Sometimes called Stoffer Creek). This is the same creek that our water comes from Proof 00370 Dated 1903. Due to the shortage of water, any usage of water in above property, would only hinder our present situation".

be insufficient water for irrigation [sic] and stock water. I am a water user under Proof #00370 Earnest Hodges.

William D. and Jan Wagner requested that the State Engineer deny Application 49605.

George Knezevich, Laura Murdock, Shirley Mensink; Dennis W. Mensick; Fred and Charlotte Paschal; Steve Parker; and Kelly H. Parker protested Application 49605 on the following grounds:

A portion of this water right affects property owned by myself and I feel that the transfer of this water pursuant to the above described application would be detrimental to my property and to that of others also affected by Proof # 00459.

George Knezevich, Laura Murdock, Shirley Mensink; Dennis W. Mensick; Fred and Charlotte Paschal; Steve Parker; and Kelly H. Parker requested that the State Engineer deny Application 49605.

Jack L. Goad protested Application 49605 on the following grounds:

A portion of this water right affects property owned by myself in respect the added demand for water in dry seasons, also the diversion would increase an added amount of erosion [sic] to existing property at a point of diversion. Also I feel that when I bought my property with the existing water right I should have been informed of the amount of the total allotment of decreed water right under proof #00459.

Jack L. Goad requested that the State Engineer deny Application 49605.

Albert C. Jones and Dolores D. Jones protested Application 49605 on the following grounds:

1. Protestants own a portion of the E½ of Section 24, T.33N. R.57E., MDM to which a portion of Proof No. 00459 as set forth on pages 63 & 103 of the Edwards Decree, Civil Action No. 2804 in the Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt is appurtenant and is a joint owner and user of the Juett Ditch.
2. That JOSEPH B. KEY or his predecessors have not made use of the Juett Ditch, which was the ditch used to transport the waters diverted from Lamoille Creek under Proof No. 00459 to the adjudicated place of

- use in the N½ of Section 26, T.33N., R.57E., MDM, to Protestants personal knowledge and based upon Protestants information and belief for a significant number of years prior to 1978.
3. That through continuous long term non-use of the Juett Ditch by JOSEPH B. KEY or his predecessors, the right to use said ditch in connection for transporting the water upon which [sic] a portion of the application is based has been forfeited.
  4. That Protestants, together with other joint users of the Juett Ditch and the Chas. Trescartes Ditch, have annually performed the necessary maintenance upon said ditches without any assistance or reimbursement for costs by JOSEPH B. KEY or his predecessors which has resulted in forfeiture by applicant to the use of the transmission ditch.
  5. Approval of the application would result in intermixing the Lamoille Creek system with the Rabbit Creek system and adversely affect historical stream flows.
  6. Protestants are informed and believe that granting of the application will require additional administrative management by and expense to the Water Resources Division of the State of Nevada, which management and expense will be necessary to properly administer the water and should be paid by Applicant without contribution from Protestants or other water users.
  7. The Humboldt water system has been totally adjudicated and decreed and granting of the application will increase the ditch loss which should be subtracted from the water rights available for the Applicant should the application be granted at the point of diversion from Rabbit Creek.

Albert C. and Delores D. Jones requested that the State Engineer deny Application 49605.

### III.

After all parties of interest were duly noticed by certified mail,<sup>3</sup> a public administrative hearing in the matter of protested Application 49605 was held on January 16, 2003, in Elko, Nevada, before representatives of the State Engineer.

Present at the administrative hearing were the applicant Joseph Key, Ross de Lipkau, attorney for Mr. Key, protestants Alfred Salicchi, representing Salicchi Ranches, Stewart R.

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<sup>3</sup> Exhibit No.1 and Transcripts, public administrative hearing before the State Engineer, January 16,2003 (hereafter "Transcript").

Wilson, attorney for Salicchi Ranches, and Marilyn Tipton and Otis. W. Tipton, III.

**FINDINGS OF FACT**

**I.**

Application 49605 was filed on December 30, 1985, by Joseph Key to change the place of use of a portion of Humboldt River Decree Claim No. 00459. Application 49605 proposes to change 3.438 cfs of water, for the irrigation of 279.42 acres of land. The source of water decreed under Claim No. 00459 originates from Lamoille Creek, Rabbit Creek, Little Rabbit Creek, and swamps and springs.<sup>4</sup> The proposed place of use of Application 49605 is described as being located in portions of the E½ and the E½ W½ of Section 2, T.33N., R.57E., M.D.B.&M. and portions of the W½E½, SE¼SE¼, and E½E½SW¼ of Section 35, T.34N., R.57E., M.D.B.&M.

The existing place of use of the portion of Claim No. 00459 proposed to be changed under Application 49605 is described as being located within portions of the N½ of Section 26, T.33N., R.57E., M.D.B.&M.<sup>1</sup> The State Engineer finds that the proposed and existing places of use are located within the Rabbit Creek and Little Rabbit Creek drainages.

**II.**

The State Engineer attempted to notify all of the subject protestants of the administrative hearing by certified mail. Those certified receipts that came back unclaimed were then resent to the subject parties by regular mail. Present at the hearing of Application 49605 were protestants Marilyn Tipton, Otis W. Tipton, III, and Alfred Salicchi representing Salicchi Ranches and the applicant Joseph Key was also present. Mr. de Lipkau, in his pre-hearing statement<sup>5</sup> and opening statement<sup>6</sup> contended that Salicchi Ranches was no longer party to the

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<sup>4</sup> In the matter of the Determination of the Relative Rights of the Waters of the Humboldt River Stream System and Tributaries, Case No. 2804, Sixth Judicial District Court of Nevada, In and for the County of Humboldt, 1923-1938. See Claim No. 00459, Albert Trescartes, Edwards Decree, pp. 62, 63 and 103 (Humboldt Decree).

<sup>5</sup> Exhibit 12.

<sup>6</sup> Transcript, pp. 11, 12 and 15.

protest because the partnership was no longer in existence and although Mr. Salicchi owned personal property it was not part of Salicchi Ranches. Mr. Wilson objected to Mr. de Lipkau's motion claiming that after 15 years without any action, the State Engineer should have repeated the statutory publication period for Application 49605 so that any successors to Salicchi Ranches could, if they so desired, come forward and participate in the hearing.

Mr. Salicchi may not personally have any current water rights appurtenant to and serviced by Rabbit Creek, but he did at that point in time when Application 49605 was filed. Mr. Salicchi did not delay the action on Application 49605 and as such should not be penalized for something that was out of his control. Furthermore, testimony presented at the administrative hearing indicated that Mr. Salicchi holds a deed of trust to some of the property once owned by Salicchi Ranches. The State Engineer finds that Alfred Salicchi has standing as a protestant to Application 49605 and that the Nevada Revised Statute does not provide for the republishing of applications regardless of the time it takes to process them.

### III.

Issue No. 2 of Exhibit "A" of the Salicchi Ranches' protest claimed that under the provisions of the Edwards Decree the water of Lamoille Creek under Claim No. 00459 had to be flumed over the channel of Rabbit Creek. Also, during Mr. Salicchi's testimony he indicated that it was his understanding that the Blue Book (Humboldt River Decree) did not allow for the commingling of water from one creek with water from another creek.<sup>7</sup> No other evidence was provided by the protestant to substantiate his claim that the flow of water from Lamoille Creek was required to be flumed over Rabbit Creek. The State Engineer finds that the only reference within the Humboldt River Decree to the waters of Lamoille Creek under Claim No. 00459 is a note indicating that this right was initiated prior to 1905 and then was transferred

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<sup>7</sup> Transcript, pp. 33 and 34.

from Section 25 by permit to Section 26, which is the existing place of use under Claim No. 00459.<sup>8</sup>

**IV.**

Salicchi Ranches alleges that if the State Engineer grants Application 49605, the increased flows to Little Rabbit Creek and Rabbit Creek would cause harm to the protestant's existing water rights, land, diversions and ditch system. The protestant believes that his water rights would be harmed because the additional flows would increase the conveyance losses throughout the distribution system and that the increased flows would destabilize the natural creek.

The State Engineer finds that no substantial evidence or testimony was provided by the protestant to substantiate these allegations. The diversion rate for the Lamoille Creek portion of Application 49605 is to be measured at the take-out (point of diversion) from Lamoille Creek and that water deliveries will be subject to existing priorities on the Lamoille Creek system.

**V.**

Application 49605 proposed to change the place of use of the waters of Lamoille, Rabbit and Little Rabbit Creeks and Swamp and Spring previously appropriated under Claim No. 00459. During the administrative hearing, testimony was given indicating the Little Rabbit Creek had been plowed under and was no longer a viable source of water. The State Engineer finds that the portion of Claim No. 00459, being 20 acres, previously irrigated by Little Rabbit Creek is not available for transfer under Application 49605.

**VI.**

A portion of the waters of Claim No. 00459 originates from Swamps and Springs for the irrigation of 27.20 acres. No evidence or testimony was presented as to the origins of this water nor its reliability as to its ability to reach the proposed place of use under Application 49605. After a review of the records in his office, the State Engineer was unsuccessful in

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<sup>8</sup> Humboldt River Decree, p.62 of the Edwards Decree.

determining their location in relation to Lamoille or Rabbit Creeks. The State Engineer finds that he is unable to make a determination as to the location of the Swamp and Spring water or to its reliability as a source for the irrigation of land at least five miles down stream from its original place of use and therefore is not available for transfer under Application 49605.

**VII.**

During the administrative hearing Otis W. Tipton, III, requested that the State Engineer prohibit the use of the water granted under Permit 2145, Certificate 1116.<sup>9</sup> A review of Permit 2145 indicates that the current owner of record is the Elko Partnership. The source of water under Permit 2145 is wastewater resulting from the irrigation of land located within the W½ of Section 26, T.33N., R.57E., M.D.B.&M. During testimony it was determined that the irrigation of approximately 20 acres<sup>10</sup> within the N½ of said Section 26 contributes drain and wastewater flows to Stoffer Creek. Mr. Tipton indicated that there have been no return flows to Stoffer Creek since 1994 and that this lack of water has impacted his ability to use the waters of Stoffer Creek.<sup>11</sup> The State Engineer finds that the S½ of said Section 26 is irrigated under Claim No. 00446, which would also contribute drain and wastewater to Stoffer Creek. The State Engineer finds that upstream water users are not responsible for providing drain and wastewater to downstream users.<sup>12</sup> The State Engineer finds that Permit 2145, Certificate 1116 was issued for wastewater and if the wastewater is not available the permittee does not have the ability or resource to place water to beneficial use, but the right does not cease to exist because once drain and wastewater is again available the use can resume.

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<sup>9</sup> Exhibit 14.

<sup>10</sup> Transcript, p. 69.

<sup>11</sup> Transcript, pp. 67 to 74.

<sup>12</sup> *Ryan v. Gallio*, 52 Nev. 330, 286 Pac. 963 (1930).

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>13</sup>

### II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:<sup>14</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 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.

Application 49605 was filed to change the place of use of a portion of the water previously appropriated under Humboldt River Decree Claim No. 00459. The application proposes to take water from Lamoille Creek, Little Rabbit Creek and several swamps and springs to irrigate 279.42 acres of land. The waters of Lamoille Creek under Claim 00459 were used to irrigate the N½ of Section 26, T.37N., R.53E., M.D.B.&M. which were conveyed through the ditches stated in the decree. The State Engineer concludes that the protestant did not provide substantial evidence to support the claim that the Lamoille Creek water was to be forever flumed over Rabbit Creek. The State Engineer further concludes in the instance of Application 49605 that the granting of a change application on water already appropriated from decreed or permitted sources will not conflict with any existing right, will not conflict with the protectible interests in domestic wells as set forth in NRS § 533.024, or will not threaten to prove detrimental to the public interest as this changes water already appropriated.

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<sup>13</sup> NRS chapter 533.

<sup>14</sup> NRS § 533.370(3).

IV.

The Humboldt River Decree sets forth the dates of relative priorities and irrigated acreage between appropriators. These priorities determine the order in which the appropriator is entitled to divert water and the amount of land that can be irrigated under that priority. The relative priority dates of Claim 00459 from the Edwards Decree are listed on the following table along with the number of acres allowed under that priority, diversion rate (cfs), and source:<sup>15</sup>

Priority	Acres	Diversion Rate (cfs)	Duty (afa)	Source
1898	27.20	0.335	81.60	Swamps and Springs
1898	17.00	0.209	51.00	Rabbit Creek
1900	20.00	0.246	60.00	Little Rabbit Creek
1900	55.90	0.688	167.70	Lamoille Creek
1902	24.00	0.295	72.00	Lamoille Creek
1903	27.20	0.335	81.60	Lamoille Creek
1911	87.00	1.07	261.00	Lamoille Creek
1912	61.70	0.759	185.10	Lamoille Creek
Total	320	3.937	960.0	

Application 49605 proposes to irrigate 279.42 acres of land of which 138.56 acres are irrigated under Humboldt River Decree Claim No. 00453 (Barlett Decree) from Rabbit Creek and Springs. The priorities, acres irrigated and diversion rates from the Barlett Decree are:

<sup>15</sup> Humboldt River Decree, Page 62, 63 and 103 of the Edwards Decree.

Priority Date	Acres	Diversion Rate (cfs)	Duty (af)
1873	12.50	0.154	37.50
1890	55.70	0.685	167.10
1896	56.71	.698	170.13
1904	13.65	.168	40.95
	138.56	1.705	415.68

The State Engineer further concludes that 138.56 acres of the land to be irrigated under Change Application 49605 are presently irrigated under Claim No. 00453 and that the Humboldt River Decree does not allow the stacking of water so the amount of land allowed to be irrigated under Application 49605 will be limited to 140.86 acres. Based on testimony at the administration hearing, the State Engineer concludes that the 20.0 acres irrigated from Little Rabbit Creek are unavailable for transfer under Application 49605. Due to the uncertainty of the swamp and spring sources under Claim No. 00459, the State Engineer concludes that the 27.50 acres irrigated from those sources are unavailable for transfer. The State Engineer further concludes that such water will only be made available when in priority and the duty of water from all sources will be at 3.0 acre-feet per acre as decreed.

Based on the above conclusions the State Engineer deems it incumbent upon the applicant to determine which priorities in the amount of 134.24 acres are to be transferred to the proposed place of use, except for those lands irrigated from Little Rabbit Creek, Swamps and Springs. Also, a map must be prepared delineating the lands to be irrigated under Application 49605 at the proposed place of use by priority dates.

**v.**

Salichhi Ranches contends if application 49605 is approved the natural channel of Rabbit Creek will be subject to additional erosion causing instability to its stream banks because of insufficient channel capacity. The State Engineer concludes that the protestant did not provide substantial evidence to support

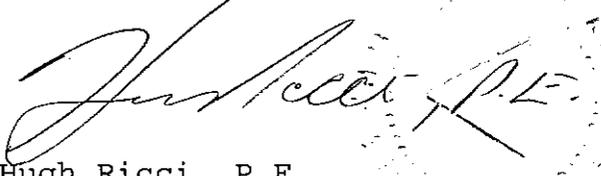
the claim that any increase in the proposed diversion rate will cause a degradation of the natural stream channel.

**RULING**

The protests to Application 49605 are overruled and application is approved subject to the following terms and conditions:

1. Subject to the terms and conditions of the Humboldt River Decree
2. Subject to existing rights
3. Prior to any permit being issued the applicant or his successor in interest must specify in detail by legal description the lands under the existing place of use that are no longer to be irrigated under the proposed change/and the proposed place of use by priority date of the water being changed under this application. The remaining portion of the place of use under Claim No. 00459 of the Humboldt River Decree shall be described by legal description and reflect the source of water.
4. Any losses incurred due to the increased distance to the proposed place of use will be borne by the applicant. No additional water above what has been historically delivered will be released from any and all sources.

Respectfully submitted,

  
Hugh Ricci, P.E.  
State Engineer

HR/KH/dl

Dated this 2nd day of  
January, 2004.