

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

IN THE MATTER OF APPLICATIONS )  
12536, 12537, 25185, 25186, 25187, )  
25188, 25189, 25190, 25191, 25192, )  
46273 AND 46274 FILED TO )  
APPROPRIATE THE PUBLIC WATERS )  
FROM SURFACE SOURCES WITHIN )  
THE UPPER REESE RIVER VALLEY )  
HYDROGRAPHIC BASIN (56), )  
LANDER COUNTY AND NYE )  
COUNTY, NEVADA. )

**RULING**

**#5790**

**GENERAL**

**I.**

Application 12536 was filed on July 14, 1948, by Lawrence O'Toole to appropriate 1.0 cubic foot per second (cfs) of the water of Knox Creek for the irrigation of 150 acres of land. The proposed place of use is described as being located within Lots 3 and 4 of the SW $\frac{1}{4}$ , E $\frac{1}{2}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 19, T.16N., R.42E., M.D.B.&M. The proposed point of diversion is described as being located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 34, T.16N., R.42E., M.D.B.&M.<sup>1</sup>

**II.**

Application 12537 was filed on July 14, 1948, by Lawrence O'Toole to appropriate 0.5 (cfs) of the water of Crane Creek for the irrigation of 150 acres of land. The proposed place of use is described as being located within Lots 3 and 4 of the SW $\frac{1}{4}$ , E $\frac{1}{2}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 19, T.16N., R.42E., M.D.B.&M. The proposed point of diversion is described as being located in the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 3, T.15N., R.42E., M.D.B.&M.<sup>2</sup>

**III.**

Application 25185 was filed on July 31, 1969, by Bartley O'Toole and George Gladwill to appropriate 15 cfs of the water of the Reese River for the irrigation of 600 acres of land. The proposed place of use is described as being

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<sup>1</sup> File No. 12536, official records in the Office of the State Engineer.

<sup>2</sup> File No. 12537, official records in the Office of the State Engineer.

located within the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 26, SE $\frac{1}{4}$  SE $\frac{1}{4}$ , W $\frac{1}{2}$  E $\frac{1}{2}$ , E $\frac{1}{2}$  W $\frac{1}{2}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 27, T.13N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 34, T.13N., R.40E., M.D.B.&M.<sup>3</sup>

#### IV.

Application 25186 was filed on July 31, 1969, by Bartley O'Toole and George Gladwill to appropriate 10 cfs of the water of Stewart Creek for the irrigation of 600 acres of land. The proposed place of use is the same as that described under Application 25186. The proposed point of diversion is described as being located in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 35, T.13N., R.40E., M.D.B.&M.<sup>4</sup>

#### V.

Application 25187 was filed on July 31, 1969, by Bartley and Lily Elizabeth O'Toole to appropriate 10 cfs of the water of Mohawk Creek for the irrigation of 600 acres of land. The proposed place of use is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, E $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 25, T.14N., R.40E., M.D.B.&M., and the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, NE $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$ , E $\frac{1}{2}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 19, W $\frac{1}{2}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.14N., R.41E., M.D.B.&M. The proposed point of diversion is described as being located in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.13N., R.41E., M.D.B.&M.<sup>5</sup>

#### VI.

Application 25188 was filed on July 31, 1969, by Bartley and Lily Elizabeth O'Toole to appropriate 15 cfs of the water of the Reese River for the irrigation of 600 acres of land. The proposed place of use is the same as that described under Application 25187. The proposed point of diversion is described as being located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 25, T.14N., R.40E., M.D.B.&M.<sup>6</sup>

#### VII.

Application 25189 was filed on July 31, 1969, by Bartley and Lily Elizabeth O'Toole to appropriate 10 cfs of the water of Crane Creek for the irrigation of 600 acres of land. The proposed place of use is the same as that described under

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<sup>3</sup> File No. 25185, official records in the Office of the State Engineer.

<sup>4</sup> File No. 25186, official records in the Office of the State Engineer.

<sup>5</sup> File No. 25187, official records in the Office of the State Engineer.

<sup>6</sup> File No. 25188, official records in the Office of the State Engineer.

Application 25187. The proposed point of diversion is described as being located in the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.13N., R.41E., M.D.B.&M.<sup>7</sup>

#### VIII.

Application 25190 was filed on July 31, 1969, by Bartley and Lily Elizabeth O'Toole to appropriate 10 cfs of the water of Meadow Creek for the irrigation of 720 acres of land. The proposed place of use is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, E $\frac{1}{2}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 25, S $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 36, T.14N., R.40E., M.D.B.&M., and the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, NE $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$ , E $\frac{1}{2}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 19, W $\frac{1}{2}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$ , of Section 30, T.14N., R.41E., M.D.B.&M. The proposed point of diversion is Meadow Creek, which is described as being located in the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 27, T.14N., R.40E., M.D.B.&M.<sup>8</sup>

#### IX.

Application 25191 was filed on July 31, 1969, by Bartley O'Toole and George Gladwill to appropriate 15 cfs of the water of the Reese River for the irrigation of 520 acres of land. The proposed place of use is described as being located within the S $\frac{1}{2}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$ , W $\frac{1}{2}$  SE $\frac{1}{4}$ , E $\frac{1}{2}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 33, T.15N., R.41E., M.D.B.&M. The proposed point of diversion is described as being located in the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 33, T.15N., R.41E., M.D.B.&M.<sup>9</sup>

#### X.

Application 25192 was filed on July 31, 1969, by Bartley and Lily Elizabeth O'Toole to appropriate 10 cfs of the water of Bonita Creek for the irrigation of 720 acres of land. The proposed place of use is the same as that described under Application 25190. The proposed point of diversion is Bonita Creek, which is described as being located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 28, T.14N., R.40E., M.D.B.&M.<sup>10</sup>

#### XI.

Application 46273 was filed on October 27, 1982, by Bartley H. O'Toole and Lily E. O'Toole to appropriate 3.5 cfs of the water of Washington Creek for the

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<sup>7</sup> File No. 25189, official records in the Office of the State Engineer.

<sup>8</sup> File No. 25190, official records in the Office of the State Engineer.

<sup>9</sup> File No. 25191, official records in the Office of the State Engineer.

<sup>10</sup> File No. 25192, official records in the Office of the State Engineer.

irrigation of 200 acres of land. The proposed place of use is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , W $\frac{1}{2}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 17, SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 16, T.15N., R.42E., M.D.B.&M. The proposed point of diversion is described as being located in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 21, T.15N., R.42E., M.D.B.&M.<sup>11</sup>

#### XII.

Application 46274 was filed on October 27, 1982, by Bartley H. O'Toole and Lily E. O'Toole to appropriate 15 cfs of the water of Washington Creek for the irrigation of 720 acres of land. The proposed place of use is described as being located within the S $\frac{1}{2}$ , S $\frac{1}{2}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 19, NE $\frac{1}{4}$ , E $\frac{1}{2}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 30, T.16N., R.42E., M.D.B.&M. The proposed point of diversion is described as being located in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 17, T.15N., R.42E., M.D.B.&M.<sup>12</sup>

#### XIII.

Application 12536 was timely protested by Roy Visbeek on the following grounds:<sup>1</sup>

That there is no unappropriated water in the source of supply; that all of the waters of Knox Creek have been heretofore appropriated and beneficially used by the protestant and his grantors and predecessors in interest for seventy or more years last past. That the water applied for is within the watershed tributary to Reese River. That to grant said water right would invade and impair the prior existing vested rights of protestant.

#### XIV.

Application 12537 was timely protested by Roy Visbeek on the following grounds:<sup>2</sup>

That there is no unappropriated water in the source of supply; that all of the waters of Crane Creek have been heretofore appropriated and beneficially used by the protestant and his grantors and predecessors in interest for seventy or more years last past. That the water applied for is within the watershed tributary to Reese River. That to grant said water right would invade and impair the prior existing vested rights of protestant.

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<sup>11</sup> File No. 46273, official records in the Office of the State Engineer.

<sup>12</sup> File No. 46274, official records in the Office of the State Engineer.

## XV.

Applications 25185, 25186, 25187, 25188, 25189, 25190, 25191 and 25192 were timely protested by the V-B Cattle Company on the following grounds:<sup>3,4,5,6,7,8,9,10</sup>

Protestant is the owner and holder of vested and application water rights which divert from the same source and said water rights will be impaired and lost if the subject application is granted. Protestant is owner of all the former Walsh and Visbeek Ranches; claims both irrigation and stock watering rights from this source. Protestant is the sole owner of all grazing rights and livestock water rights from this source in the subject area. The said waters are fully appropriated. There are no waters available for appropriation at this time.

## XVI.

Applications 25185, 25188 and 47273 were timely protested by the State of Nevada Department of Fish and Game<sup>13</sup> on the following grounds:<sup>3,6,11</sup>

For Application 25185:

The area of Reese River affected by this application, should it be granted, includes a 20 mile portion of the stream which presently supports fish life. Within this 20 mile portion are several sections considered fishable. These include a one-mile segment immediately above the Reese River Ranger Station (from the Ione road junction upstream to the confluence with Stewart Creek), and a seven and one-half mile segment located from 3.9 miles above the old Hayden (Testolin) Ranch downstream to lower Gravelly Ford. Between these two segments there are additional areas in which fish life, including brown trout, are known to inhabit.

The fish population in this area includes rainbow trout, brown trout, red-side shiners, speckled dace and Tahoe suckers. Brown trout are successfully reproducing in portions of the affected area and the naturally produced fish contribute significantly to the sport fishery. Each year approximately 3,750 catchable rainbow and brown trout are stocked into this area. Excellent fishing is reported and some brown trout up to 3 pounds have been caught there. Fisherman use of the stream has increased since 1957. In 1968, 1,430 angler days were spent fishing upper Reese River and over half of these angler days were in the affected area near the Reese River Ranger Station. In addition, 1,071 angler days were spent in the lower Reese River area around the Nye-Lander County line. The amount of water applied for in Application 25185, or any significant fraction thereof, would reduce or eliminate water flows in Reese River so that the above

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<sup>13</sup> The Nevada Department of Fish and Game is currently known as the Nevada Department of Wildlife and was also formerly known as the Nevada Division of Wildlife.

mentioned 20 miles of fish-bearing water would be eliminated. Healthy populations of trout have been known to exist in this section of the river since before the coming of white men.

For Application 25188:

The area of Reese River affected by this application, should it be granted, includes a twelve mile portion of the stream which presently supports fishlife. Within this portion of stream is a 7.5 mile section which was considered fishable. This is located above and below the Nye-Lander County line. In addition, other areas of this part of Reese River presently supports fishlife including brown trout.

The fish population in this area includes rainbow trout, brown trout, red-side shiner, speckled dace and Tahoe sucker. Brown trout are successfully reproducing in the affected area and the naturally produced fish contribute significantly to the sport fishery. Each year approximately 1,875 catchable rainbow and brown trout are stocked into this area. Excellent fishing has resulted and quality brown trout fishing has occurred in recent years. Fisherman use of this portion of Reese River in 1968 included a total of 1,071 angler days.

The amount of water applied for in Application 25188 appears to exceed all but abnormally high flows recorded for this portion of Reese River. This amount applied for or any significant fraction thereof, if granted, would eliminate or reduce water flows in Reese River so that the above mentioned twelve miles of fish-bearing water would be eliminated. This water has supported trout since before the coming of white man.

For Application 46273:

The granting of this permit for a diversion of 3.5 cfs will dry up approximately one (1) mile of quality fishing stream (much of which is on public land) for a major portion of the year. This amounts to about 20 percent of the total fishable length.

In 1972, the Nevada Department of Wildlife stocked native Lahontan cutthroat trout (a federally listed threatened species) in Washington Creek. Periodic inventories since that time have substantiated successful reproduction and in 1980 and wild fish population density of 1,373 wild fish per mile was recorded in Washington Creek.

The stream supported 199 days of angler usage in 1981.

The granting of application number 46273 would have an adverse environmental impact and would not be in the public interest.

## XVII.

After all parties were duly noticed by certified mail, a public administrative hearing was held on July 21, 2005, regarding protested Applications 12536, 12537, 25185, 25186, 25187, 25188, 25189, 25190, 25191, 25192, 46273 and 46274 in Carson City, Nevada, before representatives of the Office of the State Engineer.<sup>14</sup>

At the administrative hearing appearances were taken for the record. The only party in attendance was Bartley and Lily O'Toole of the O'Toole Ranches. With them at the hearing to provide assistance was their water right surveyor, Marv Hamrick with Gray and Associates, Inc.<sup>15</sup> There were no Protestants in attendance.<sup>16</sup>

### FINDINGS OF FACT

#### I.

Lawrence O'Toole filed Applications 12536 and 12537, on July 14, 1948. The Applicants in attendance indicated that Lawrence O'Toole was an uncle who was deceased and that the Applicants did not have an interest in Applications 12536 and 12537.<sup>17</sup>

The State Engineer finds that the Applicants do not have an interest in Applications 12536 and 12537. The State Engineer further finds that no parties came forth at the hearing on behalf of Applications 12536 and 12537; therefore, the applications are subject to denial.

#### II.

Application 25191 was filed to appropriate 15 cfs of water from the Reese River. The proposed place of use is located on the Reese River just north of the Yomba Indian Reservation and downstream of the O'Toole Ranch.<sup>18</sup> The Applicants indicated that they no longer have an interest in pursuing Application 25191 as the property compromising its place of use is now in different ownership.<sup>19</sup>

Applications 46273 and 46274 were filed to appropriate water from Washington Creek. The place of use for Application 46273 is an area on Washington Creek that is upstream from the mouth of its canyon. At the mouth of

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<sup>14</sup> Exhibit No. 1 and Transcript, public administrative hearing before the State Engineer, July 21, 2005, (hereafter "Transcript" and "Exhibits").

<sup>15</sup> Transcript, p. 5.

<sup>16</sup> Transcript, p. 6.

<sup>17</sup> Transcript, p. 10.

<sup>18</sup> File No. 25191, official records in the Office of the State Engineer.

<sup>19</sup> Transcript, pp. 19-20.

the canyon a ditch conveys Washington Creek water north approximately four miles to the place of use of Application 46274. It should be noted that the place of use for Application 46274 encompasses the places of use of Applications 12536 and 12537, previously discussed in this ruling. As with Applications 12536 and 12537, the Applicants indicated that they had no ownership interest in the properties described within the place of use of Applications 46273 and 46274.<sup>20</sup>

The State Engineer finds that the Applicants no longer wish to pursue Applications 25191, 46273 and 46274 as the land described in the places of use are now in different ownership; therefore, these applications are subject to denial.

### III.

Applications 25190 and 25192 seek to irrigate an additional 120 acres of land located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 25 and the S $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 36, T.14N., R.40E., M.D.B.&M. The Applicants indicated that they did not own the 120 acres of land located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 25 and the S $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 36, T.14N., R.40E., M.D.B.&M.<sup>21</sup> Additional research through the Nye County assessor's office confirms that the Applicants are not listed as the owner of record; Two Rock Holdings, LLC and the Bureau of Land Management own 40 acres and 80 acres, respectively.<sup>22</sup> The State Engineer finds that 120 acres, of the 720 acres described under Applications 25190 and 25192, are not owned or controlled by the Applicants.

### IV.

Applications 25185 and 25186 share the same 600-acre place of use within portions of Sections 22, 26 and 27, T.13N., R.40E., M.D.B.&M. The sources of water for Application 25185 and Application 25186 is the Reese River and Stewart Creek, respectively. At each of these sources there is a corresponding claim of vested right, V-02701 and V-02702. In addition, the land is also irrigated from a supplemental underground well under Permit 71961.

Applications 25187, 25188, 25189, 25190 and 25192 were also filed on points of diversion corresponding to the Applicants' claims of vested right. The applications propose to irrigate 680 acres in portions of Sections 24 and 25, T.14N., R.40E., M.D.B.&M. and portions of Sections 18, 19, 20 and 30, T.14N., R.41E.,

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<sup>20</sup> Transcript, pp. 10 and 27.

<sup>21</sup> Transcript, pp. 23-27.

<sup>22</sup> See, File No. 25190, Nye County Assessor Property Information Search, September 14, 2005, official records in the Office of the State Engineer.

M.D.B.&M. In addition, Applications 25190 and 25192 also seek the irrigation of 120 acres located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 25 and the S $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 36, T.14N., R.40E., M.D.B.&M. The sources of water for Applications 25187, 25188, 25189, 25190 and 25192 are Mohawk Creek, Reese River, Crane Creek, Meadow Creek and Bonita Creek, respectively. At each source there is a corresponding claim of vested right, V-02704, V-02703, V-02705, V-02706 and V-02707. In addition, the land is also irrigated from a supplemental underground well under Permit 61093.

The applications have the same points of diversion as the Applicants' claims of vested right. A review of the described places of use shows that the applications also overlap the places of use of the claims of vested rights. However, the applications do seek to irrigate some additional acreage beyond what is claimed under the vested rights. For the areas outside the places of use of the claims of vested rights, the applications would allow for the irrigation of additional land or supplement groundwater irrigation under the Applicants' existing groundwater permits.

The senior appropriator of the water of a stream has the right to the quantity of water he has appropriated against all subsequent appropriators from the same source;<sup>23</sup> and the rights of the latter are subject to that who was first in time, regardless of their position on the stream.<sup>24</sup> The first appropriator has the right to insist that the waters he has appropriated be available for his proper use;<sup>25</sup> and he has the right to their exclusive use up to the amount of his appropriation.<sup>26</sup> Simply put, a senior water right on a surface-water source must be satisfied before an appropriation of water can occur under a junior appropriator. Applying this doctrine to the Reese River and its tributaries first requires that the existing water rights be examined by their respective priority dates. Based upon the information found within the proofs, the most senior rights on this stream system are represented by claims of vested right. Next in priority would be any permitted water right. Any water right permits approved under Applications 25185, 25186, 25187, 25188, 25189, 25190 and 25192 would be assigned priority dates of July 31, 1969, with these dates being the most

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<sup>23</sup> Lobdell v. Simpson, 2 Nev. 274, 279 (1866); Doherty v. Pratt, 34 Nev. 343, 349, 124 Pac. 574 (1912).

<sup>24</sup> Proctor v. Jennings, 6 Nev. 83, 87 (1870).

<sup>25</sup> Barnes v. Sabron, 10 Nev. 217, 233 (1875).

<sup>26</sup> Jerret v. Mahan, 20 Nev. 89, 98 17 Pac. 12 (1888).

junior priorities on the Reese River stream system. For these junior permits to be in priority, the stream flow must surpass the amount claimed under senior water rights on a sustained basis over the course of the irrigation season. If appropriations of water were to occur when the permits were not in priority, they would be made at the expense of senior water rights within the Reese River stream system. Under NRS § 533.370, the approval of a new appropriation of water from a surface source must not adversely affect existing rights.

The Reese River and its tributaries constitute a stream system where the relative rights claimed to the water are not adjudicated. Claimants are only required to file their proofs and supporting maps when an adjudication is initiated by the State Engineer and an order to file is issued. However, on a stream system that has not been adjudicated or an adjudication has not been initiated, claimants to vested rights often file their proofs and supporting maps in order to inform the State Engineer, and any applicant for a permitted right on the same source, that the vested right exists. An examination of records on file in the Office of the State Engineer shows numerous claims of vested rights are filed on the Reese River stream system.<sup>27</sup> In addition, it is unknown how many other claimants may come forward if an adjudication is initiated.

A review of the evidence and testimony at the administrative hearing failed to show that there is sufficient water in the stream system to satisfy all senior water rights and any additional water requested under Applications 25185, 25186, 25187, 25188, 25189, 25190 and 25192.

The State Engineer finds that the Reese River stream system must be adjudicated to fully determine the existing rights claimed on this source before any determination of unappropriated water can be made regarding Applications 25185, 25186, 25187, 25188, 25189, 25190 and 25192.

#### V.

Applications 12536 and 12537 were timely protested by Roy Visbeek. Applications 25185, 25186, 25187, 25188, 25189, 25190, 25191 and 25192 were timely protested by the V-B Cattle Company. Applications 25185, 25188 and 47273 were timely protested by the State of Nevada Department of Fish and Game. None

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<sup>27</sup> Water Rights Database, Hydrographic Abstract, Upper Reese River Valley Hydrographic Basin (56), official records in the Office of the State Engineer.

of the Protestants appeared at the hearing to substantiate their protest claims with evidence and testimony.<sup>28</sup>

The State Engineer finds that the Protestants provided no evidence or testimony in support of their protest claims.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>29</sup>

#### II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.<sup>30</sup>

#### III.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>31</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use conflicts with protectible interests in domestic wells as set forth in NRS § 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

#### IV.

The State Engineer concludes that the Protestants failed to attend the administrative hearing and failed to present evidence and testimony to support their protest claims; therefore, the protests are hereby dismissed.

#### V.

At the administrative hearing, no interest was expressed by any party in regards to pursuing Applications 12536, 12537, 25191, 46273 and 46274. Further, the Applicants that appeared at the hearing indicated they do not own or control the land described in the places of use of these applications and have no interest in

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<sup>28</sup> Transcript, pp. 6, 30-31.

<sup>29</sup> NRS chapter 533.

<sup>30</sup> NRS § 533.375.

<sup>31</sup> NRS § 533.370(5).

pursuing these applications. Regarding Applications 12536, 12537, 25191, 46273 and 46274, the State Engineer concludes it would threaten to prove detrimental to the public interest to issue any permit under these circumstances.

**VI.**

Numerous claims of vested right have been filed on the Reese River stream system, and other claimants may come forward in the future. The validity and magnitude of these claims can only be determined through an adjudication of the water source. The State Engineer is prohibited by law from granting an application to appropriate the public waters where there is no unappropriated water at the proposed source. In the absence of an adjudication, the State Engineer concludes that to issue any permits under Applications 25185, 25186, 25187, 25188, 25189, 25190 and 25192 would be premature and may conflict with existing claims of vested right on the Reese River stream system; therefore, the applications cannot be considered for approval at this time.

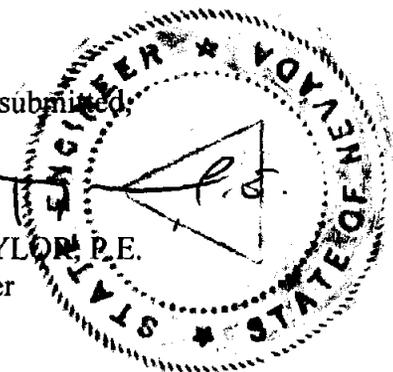
**RULING**

Applications 12536, 12537, 25191, 46273 and 46274 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest. As to Applications 25185, 25186, 25187, 25188, 25189, 25190 and 25192, no decision is rendered at this time.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer



TT/TW/jm

Dated this 16th day of  
October, 2007.