

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

IN THE MATTER OF APPLICATION 64825)
FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF THE)
WATERS OF THE REESE RIVER,)
PREVIOUSLY APPROPRIATED UNDER)
PERMIT 1975 WITHIN THE UPPER REESE)
RIVER VALLEY HYDROGRAPHIC BASIN)
(56), LANDER COUNTY, NEVADA.)

RULING

#5930

GENERAL

I.

Application 64825 was filed by Reese River Cattle Company to change the point of diversion and the place of use of 75 cubic feet per second (cfs), not to exceed 3,000 acre-feet annually (afa), of water from the Reese River and its tributaries to be used for irrigation purposes within the Upper Reese River Valley Hydrographic Basin. The proposed place of use is described as being located within the E $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, E $\frac{1}{2}$ E $\frac{1}{2}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, all of Section 22, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 23, W $\frac{1}{2}$ W $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, all of Section 27, E $\frac{1}{2}$ and SW $\frac{1}{4}$ of Section 28, N $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, all of Section 34, W $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35 all within T.18N., R.42E., M.D.B.&M., and the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 2, NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 3, E $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, all within T.17N., R.42E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T.16N., R.42E., M.D.B.&M.¹

II.

Application 64825 was timely protested by William J. Gandolfo on the following grounds:¹

My home ranch is directly below Reese River Cattle Company property on the Reese River. If this diversion is allowed it will interfere with my irrigation, and current water rights. If this is allowed there will be two points of diversion with no assurance of the first diversion removal.

¹ File No. 64825, official records in the Office of the State Engineer.

This new diversion is 10,000 times larger than the old one. If river is diverted that far, it (the runoff) will never return to river and it will sink.

III.

Application 64825 was timely protested by Marie Jeanne Ansolabehere on the following grounds:¹

The original applicant, Patrick Walsh, applied to irrigate 1000 acres from "flood water" of the Reese River, by means of ditches and an impounding dam. He eventually proposed beneficial use on 1000 acres with a maximum flow of 25 cfs. His priority date of March 8, 1911 would leave him subordinate to all vested rights on the stream.

The Protestant is the holder of one of those vested rights, commonly known as the Steiner Ranch, which is downstream from the point of diversion and place of use described in Application No. 64825 (see Proof of Appropriation 05895). Application No. 64825 must be denied, or issued subject to all vested rights, including those of the Protestant, for the following reasons:

1. The flow rate in the Application is described as 75 cfs. This is erroneous, when the existent proof of beneficial use is only 25 cfs.
2. Reese River Cattle Co. proposes to expand the place of use from 1000 acres to 4900 acres. This again violates the Proof of Beneficial Use. The Applicant is not entitled to expand his use beyond his Proof of Beneficial use, under the guise of changing his place of use.
3. According to every Application, Permit, and Proof filed prior to No. 64825, the Applicant is only entitled to flood water. "Flood water" cannot be defined unless and until the Reese River is adjudicated. Until the stream is adjudicated, the Applicant should not be permitted to store any water. It is very likely that downstream vested rights, such as the Steiner Ranch, are completely dependent upon existence of so-called flood water in the spring of an average year. The storage of any such water during irrigation season will deprive downstream vested right holders of water which is not truly surplus in the system.

FINDINGS OF FACT

I.

Nevada Revised Statute 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that in the case of protested Application 64825 there is sufficient information contained within the records of the Office of the State Engineer to gain full understanding of the issues and a hearing on this matter is not required.

II.

Permit 1975 was permitted on September 7, 1911. The permit was for 3,000 acre-feet of flood water per season to be impounded behind an earthen dam. The point of diversion, which is the outlet of the earthen dam, is within the SE $\frac{1}{4}$ of Section 26, T.16N., R.41E., M.D.B.&M. The place of use of Permit 1975 is within the NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3 and the N $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4 all within T.16N., R.42E., M.D.B.&M., and the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 33 and the SW $\frac{1}{4}$ of Section 34 all within T.17N., R.42E., M.D.B.&M. The total acreage was 1,000 acres.²

III.

After numerous letters during the 1920s between the permit holder and the State Engineer regarding the Proof of Beneficial Use, the State Engineer by letter dated April 17, 1995, cancelled Permit 1975.³

IV.

The actual point of diversion and place of use of Permit 1975 were not at the locations written in the permit. The water has been diverted and used at the current point of diversion and place of use, which is the proposed point of diversion and place of use of Change Application 64825, since 1917.

V.

Ruling No. 4665, required that Mr. Jim Champie, owner of Reese River Cattle Company, file an application for an extension of time in a timely manner before the cancellation of Permit

² File No. 1975, official records in the Office of the State Engineer.

³ State Engineer's Ruling No. 4665, dated October 2, 1998, official records in the Office of the State Engineer.

1975 would be rescinded. An extension of time was filed on November 2, 1998, in the Office of the State Engineer.

VI.

Per Ruling No. 4665, the State Engineer rescinded the cancellation of Permit 1975 on November 2, 1998, without loss of priority date to allow time for a change application to be filed to correct the point of diversion of Permit 1975. Application 64825 is that change application.

VII.

The State Engineer finds that there is no evidence in the Office of the State Engineer that the approval of Application 64825 would threaten to prove detrimental to the public interest, because the water has been in use since 1917.

CONCLUSIONS

I.

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

II.

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

- 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 change Application 64825 was filed to correct the point of diversion and place of use of Permit 1975.

IV.

The State Engineer concludes that the approval of Application 64825 will not conflict with existing rights nor would it threaten to prove detrimental to the public interest.

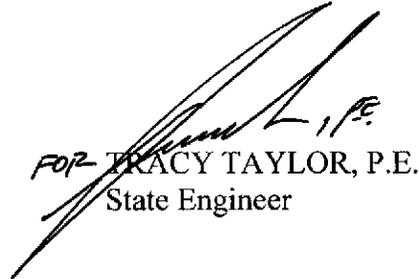
⁴ NRS § chapter 533.

⁵ NRS § chapter 533.370(5).

RULING

The protests to Application 64825 are hereby overruled and said application is hereby approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,



FOR TRACY TAYLOR, P.E.
State Engineer

TT/JD/jm

Dated this 9th day of

February, 2009.