

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

IN THE MATTER OF APPLICATION 69698)
FILED TO APPROPRIATE PUBLIC WATERS)
FROM A SURFACE WATER SOURCE WITHIN)
THE CONTINENTAL LAKE VALLEY)
HYDROGRAPHIC BASIN (2) HUMBOLDT)
COUNTY, NEVADA.)

RULING

6003

GENERAL

I.

Application 69698 was filed on February 28, 2003, by the Alder Creek Ranch, LLC, later assigned to Alder Creek Denio Ranch, LLC, to appropriate 4.6 cubic feet per second of water from Alder Creek and its tributaries for irrigation purposes. The proposed place of use is described as being located within portions of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, T.44N., R.28E., M.D.B.&M. and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 26, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27, portions of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T.45N., R.28E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T.44N., R.28E., M.D.B.&M.¹

II.

Application 69698 was timely protested by Edith and Julian Marcuerquiaga, Trustees of the Marcuerquiaga 1980 Living Trust on the grounds that granting Application 69698 would violate the terms and conditions of a Memorandum of Understanding between the Marcuerquiaga's and the Nevada Department of Wildlife concerning minimum pool storage of water in Big Onion (Onion Valley) Reservoir² in Humboldt County.

¹ Application 69698, official records in the Office of the State Engineer.

² Protestant's reference to Big Onion Reservoir is actually known as the Onion Valley Reservoir on the United States Geological Survey topographic maps.

FINDINGS OF FACT

I.

A Memorandum of Understanding (Conservation Easement Pursuant to NRS §§ 111.390 through 111.440) exists between Edith and Julian Marcuerquiaga, Trustees of the Marcuerquiaga 1980 Living Trust and the Nevada Department of Wildlife. The subject matter of the Agreement is a perpetual right to store water for a permanent, minimum pool to sustain a fishery at Big Onion Reservoir,² and the dismissal of court case numbers 33658 and 35628 filed in the Supreme Court of the State of Nevada.¹

II.

The Marcuerquiaga's are concerned that diversions of water above Big Onion Reservoir² will affect its potential minimum pool storage capacity. Onion Valley Reservoir is located in Sections 32 and 33, T.45N, R.28E. The proposed point of diversion for Application 69698 is located in Section 10, approximately 4.5 miles north and below the outfall point of Big Onion Reservoir. Line 1 on the application states the source of water is from Alder Creek and its tributaries. On line 12 in the remarks section of the application, the source of the water is further described as being Alder Creek and its tributaries and both Onion Valley Reservoir and Little Onion Reservoir. The State Engineer finds that water cannot be stored or released from Onion Valley or Little Onion Reservoirs to satisfy Application 69698 because the source of the water is to be only from Alder Creek and its tributaries.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

³ NRS chapter 533.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- 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.

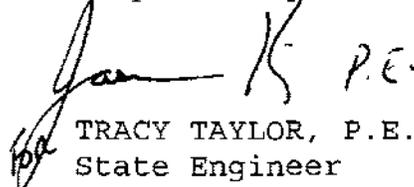
III.

The issuance of Application 69698 will not interfere with the Marcuerquiaga's Memorandum of Agreement with the Nevada Department of Wildlife because the permit terms will explicitly state "...this permit is issued subject to all existing rights on the source." Because Application 69698 would be junior to all existing rights on Alder Creek and its tributaries, water diversion could only occur after all the senior water rights were satisfied.

RULING

The protest is overruled and Application 69698 is approved subject to all existing rights and payment of the statutory permit fees.

Respectfully submitted,

 P.E.
TRACY TAYLOR, P.E.
State Engineer

TT/SEM/jm

Dated this 27th day of
August, 2009.

⁴ NRS § 533.370(5).