

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

IN THE MATTER OF APPLICATIONS 63881)
AND 63882 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF SURFACE SOURCES)
LOCATED WITHIN THE CARSON VALLEY)
HYDROGRAPHIC BASIN (105), DOUGLAS)
COUNTY, NEVADA.)

RULING

#5846

GENERAL

I.

Application 63881 was filed on March 2, 1998, by Five Creek Limited Liability Company to appropriate 1.0 cubic foot per second (cfs) of water from an unnamed spring to irrigate 40 acres within portions of the NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.12N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, T.12N., R.19E., M.D.B.&M.¹

II.

Application 63882 was filed on March 2, 1998, by Five Creek Limited Liability Company to appropriate 1.0 cfs of water from Barber Creek to irrigate 40 acres within portions of the NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.12N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T.12N., R.19E., M.D.B.&M.²

III.

Application 63881 was timely protested by Scossa Brothers, Dorothy N. Colley, Theodore J. Weber and Dennis Buckley. Application 63882 was timely protested by John M. Colyer, Scossa Brothers Ranch, David H. Biggs, Robert D. Watrous, Donald L. & Toni M. Rooker, Dorothy N. Colley, Dennis R. Buckley and Theodore J. Weber. The protests are summarized as follows:^{1,2}

¹ File No. 63881, official records in the Office of the State Engineer.

² File No. 63882, official records in the Office of the State Engineer.

- The waters are fully appropriated under existing water rights.
- There is no excess water in Barber Creek or the unnamed spring available for appropriation.
- The applications will conflict with existing rights that are downstream of the proposed points of diversion and place of use.
- The Applicant indicated that they would not seek surface water for their property and would not infringe on existing rights. The Applicant received underground water to service its property and additional water is not necessary.

FINDINGS OF FACT

I.

Application 63881 seeks to appropriate water from “unnamed spring.” A review of records on file in the Office of the State Engineer show that there are existing water rights on the spring under vested claims V-06367 and V-06368.³ The vested claims belong to Scossa Brothers, Protestant to Application 63881.

The State Engineer finds that Application 63881 would conflict with the existing rights of the Protestant.

II.

Application 63882 was filed to appropriate water from Barber Creek. The proposed point of diversion is located near the California/Nevada border and would be located up-stream of any other rights on the source. A review of records on file in the Office of the State Engineer show that there are existing water rights on Barber Creek under vested claims V-01349 and V-01350 (Permits 64308, 64309, 64310, 64311, 64312, 64313 and 64314).⁴

The State Engineer finds that Application 63882 would conflict with the existing rights on Barber Creek.

III.

A review of records on file in the Office of the State Engineer show “unnamed spring,” also known as Beers Spring, is a surface-water source that is the subject of an ongoing

³ File Nos. V-06367 and V-06368, official records in the Office of the State Engineer.

⁴ File Nos. V-01349, V-01350, 64308, 64309, 64310, 64311, 64312, 64313 and 64314, official records in the Office of the State Engineer.

adjudication in Carson Valley.⁵ The field work necessary for the adjudication process has been completed and the preliminary order of determination has been published. A review of this information indicates that Beers Spring is fully appropriated under claims of vested right and no additional water exists for further appropriation.

The State Engineer finds that there is no water available for further appropriation pursuant to Application 63881.

IV.

The waters of Barber Creek and its tributaries were adjudicated and decreed on May 27, 1921.⁶ The State Engineer finds that the Final Decree on Barber Creek and its tributaries adjudicated all claims to the stream system leaving no water available for further appropriation pursuant to Application 63882.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁸

- 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.

⁵ Preliminary Order of Determination, In The Matter Of The Determination Of The Relative Rights In And To The Waters Of Mott Creek, Taylor Creek, Cary Creek (AKA Carey Creek), Monument Creek, And Bulls Canyon, Stutler Creek (AKA Stattler Creek), Sheridan Creek, Gansberg Spring, Sharpe Spring, Wheeler Creek No. 1, Wheeler Creek No. 2, Miller Creek, Beers Spring, Luther Creek And Various Unnamed Sources In Carson Valley, Douglas County, Nevada, May 22, 2006, official records in the Office of the State Engineer.

⁶ Findings of Fact, Conclusions of Law Judgment and Decree, In the Matter of the Determination of the Relative Rights to the Waters of Barber Creek and its Tributaries in Douglas County Nevada, Reg. No. 255, First Judicial District Court of the State of Nevada, In and for the County of Douglas, May 27, 1921.

⁷ NRS chapter 533.

⁸ NRS § 533.370 (5).

III.

The State Engineer concludes that there is no unappropriated water at the proposed sources of Applications 63881 and 63882; therefore, the applications are subject to denial.

IV.

The State Engineer concludes that to approve these applications would conflict with existing rights on the respective water sources.

RULING

The protests are upheld in part and Applications 63881 and 63882 are hereby denied on the grounds that no water is available for appropriation and the approval of said applications would conflict with existing water rights.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 14th day of
May, 2008.