

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

IN THE MATTER OF APPLICATION 52725 )  
FILED TO CHANGE THE PLACE OF USE )  
OF A PORTION OF THE PUBLIC WATERS )  
OF THE TRUCKEE RIVER PREVIOUSLY )  
APPROPRIATED UNDER TRUCKEE RIVER )  
CLAIM (DTR) 64, WITHIN THE TRUCKEE )  
CANYON SEGMENT HYDROGRAPHIC )  
BASIN (91), WASHOE COUNTY, NEVADA. )

**RULING**  
**#5850**

**GENERAL**

**I.**

Application 52725 was filed on November 22, 1988, by Michael and Christine O’Gara to change the place of use of 2.0 acre-feet annually a portion of water previously appropriated under Truckee River Claim No. 64 (DTR-64). The source of water is the Truckee River (Steamboat Canal) and the proposed manner of use is for irrigation and domestic purposes, as decreed. The proposed place of use is described as being located within a portion of the NW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> of Section 22, T.19N., R.18E., M.D.B.&M. The existing place of use is described as being located within portions of the SW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> and NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> of Section 23, T.19N., R.19E., M.D.B.&M., specifically known as Lot 37 in Green Acre Heights Subdivision. The point of diversion is located within the NE <sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> of Section 31, T.19N., R.18E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

Application 52725 seeks to change the place of use of a portion of DTR-64. When evaluating an application filed to change an existing water right one part of the review process is to determine if, in fact, there is existing water available. In this case, the Applicant has stated on the application and the supporting map the exact location of the existing water rights sought for change.

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<sup>1</sup> File No. 52725, official records in the Office of the State Engineer.

The water is described as being appurtenant to 1.198 acres of land located within a portion of the E½ of Section 22 and the W½ of Section 23, T.19N., R.19E., M.D.B.&M. described as Lot 37 of the Green Acre Heights subdivision.<sup>2</sup>

The Office of the State Engineer maps the locations of water under Truckee River claims. By comparing the map showing DTR-64 to Application 52725, it is clearly shown that the described existing place of use is within an area already stripped by Permit 12330, Certificate 3643. In other words, there is no water under DTR-64 or any other Truckee River Claim number appurtenant to the described existing place of use.<sup>3</sup>

The State Engineer finds that Application 52725 is attempting to change water from an existing place of use where appurtenant water no longer exists under the described Truckee River Claim.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this determination.<sup>4</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>5</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 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 that there is no water available to change as described by Application 52725. The State Engineer further concludes that it is not in the public interest to approve a change application when the source of water does not exist; therefore, Application 52725 is subject to denial.

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<sup>2</sup> File No. 52725, official records in the Office of the State Engineer.

<sup>3</sup> See, Truckee River Map TR-115, May 21, 2003, official records in the Office of the State Engineer.

<sup>4</sup> NRS chapter 533.

<sup>5</sup> NRS § 533.370 (5).

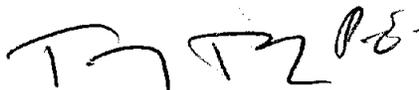
IV.

The State Engineer concludes that to grant a permit under change Application 52725 when the Applicant has failed to prove ownership of any portion of the water under DTR-64, which forms the basis for the change application, would threaten to prove detrimental to the public interest.

RULING

Application 52725 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/MM/jm

Dated this 15th day of

May, 2008.