

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

IN THE MATTER OF APPLICATIONS 15337 )  
AND 15454 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF SURFACE SOURCES )  
LOCATED WITHIN THE PINE VALLEY )  
HYDROGRAPHIC BASIN (053), EUREKA )  
COUNTY, NEVADA. )

**RULING**

**#5881**

**GENERAL**

**I.**

Application 15337 was filed on October 13, 1953, by the Eureka Livestock Company and later assigned to Michel and Margaret Ann Etcheverry Family Limited Partnership to appropriate 1.5 cubic feet per second (cfs) of water from Henderson Creek to irrigate 140 acres within portions of the N $\frac{1}{2}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$ , S $\frac{1}{2}$  NE $\frac{1}{4}$ , and NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 24, T.23N., R.51E., M.D.B.&M., Lots 4, 5, 8, 9 and 10 of Section 19, and Lot 3 of Section 30, T.23N., R.52E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 24, T.23N., R.51E., M.D.B.&M.<sup>1</sup>

**II.**

Application 15454 was filed on December 28, 1953, by the Eureka Livestock Company and later assigned to Michel and Margaret Ann Etcheverry Family Limited Partnership to appropriate 4.0 cfs of water from Henderson Creek and tributaries to irrigate approximately 400 acres described as being located within the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 27, SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 28, NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 33, E $\frac{1}{2}$  NE $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$ , N $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 34, SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 35, T.25N., R.51E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 35, T.25N., R.51E., M.D.B.&M.<sup>2</sup>

**III.**

Applications 15337 and 15454 were timely protested by Stephen Damale & Sons as summarized on the following grounds:<sup>1,2</sup>

<sup>1</sup> File No. 15337, official records in the Office of the State Engineer.

<sup>2</sup> File No. 15454, official records in the Office of the State Engineer.

- The use of the waters as proposed by the Applicant would violate and destroy the Protestant's right to the use of Henderson Creek, which have been established and perfected prior to 1876.
- The waters of Henderson Creek forms and is one of the headwaters of Garden Valley Creek, which flows to the diversion works of the Protestant.
- There is no excess water in Henderson Creek available for appropriation.
- The application will impair the Protestant's stockwater rights, established prior to 1876.

### **FINDINGS OF FACT**

#### **I.**

On September 23, 1955, a field investigation was conducted with the Applicant and Protestant in attendance. The Applicant indicated that his intent in filing the applications was to establish a better system of irrigation for their Henderson field and to replace their existing dam with one that is more substantial such that water could be stored during the winter months from Henderson Creek. It was agreed that no action be taken on the applications until such time as an agreement was reached between the Applicant and Protestant.<sup>3</sup> On correspondence dated September 7, 1961, within File No. 15337, it is indicated that an agreement between the parties could not be reached. From 1961 to 2005, there was a period of inactivity where it does not appear any further effort was made to move the application process forward. In 2005, a Report of Conveyance was filed to update the ownership of the applications from the Eureka Livestock Company to the Michel and Margaret Ann Etcheverry Family Limited Partnership.

In the intervening time from 1961 to 2005, there was a significant event in 1976 regarding claims of vested right, that is pre-statutory rights claimed prior to March 1, 1905, to the waters of the entire stream system. The waters of Pete Hanson Creek and its tributaries were adjudicated and decreed on October 8, 1976. The decree describes the water source as follows:

The headwaters of Pete Hanson Creek originate immediately below Roberts Creek Mountain and Cooper Peak at elevations in excess of 9,000 feet on the west flank of the Roberts Mountains, approximately 30 miles northwest of the town of Eureka, in Eureka County. The creek

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<sup>3</sup> See, Report of Field Investigation, September 23, 1955, File No. 15337, official records of the Office of the State Engineer.

flows westerly, northerly and northeasterly into Garden Valley where there is a confluence of Pete Hanson Creek and Henderson Creek and their commingled waters continue northerly for several miles in the valley. These proceedings adjudicate all stream waters tributary to both Pete Hanson Creek and Henderson Creek.

Henderson Creek, the principal east tributary to the drainage basin, transports stream waters from the east flank of the Roberts Mountains and the western slopes of the Sulphur Springs Range south of Table Mountain.

Several perennial springs situated in the stream system as well as snow melt waters, contribute to the flow of the stream system.<sup>4</sup>

Based on the description of the source adjudicated by the decree, it is clear that the decree includes the Henderson Creek stream system. The source of water described by Applications 15337 and 15454 is Henderson Creek and Henderson Creek & Tributaries, respectively.

The State Engineer finds that Henderson Creek is a fully adjudicated stream system. The State Engineer finds that the Final Decree on Pete Hanson Creek and its tributaries adjudicated all claims to Pete Hanson Creek, Henderson Creek, and tributaries to the stream system leaving no water available for further appropriation pursuant to Applications 15337 and 15454.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>6</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

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<sup>4</sup> Findings of Fact, Conclusions of Law Judgment and Decree, In the Matter of the Determination of the Relative Rights in and to the Waters of Pete Hanson Creek and its Tributaries Eureka County, Case No. 2866, Third Judicial District Court of the State of Nevada, In and for the County of Eureka, October 8, 1976.

<sup>5</sup> NRS chapter 533.

<sup>6</sup> NRS § 533.370 (5).

- D. the proposed use or change threatens to prove detrimental to the public interest.

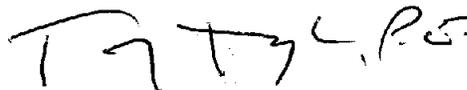
**III.**

The State Engineer concludes that to approve these applications would conflict with the existing decreed rights on the source.

**RULING**

The protest is upheld in part and Applications 15337 and 15454 are hereby denied on the grounds that no water is available for appropriation and the approval of said applications would conflict with existing decreed water rights.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/TW/jm

Dated this 11th day of

August, 2008.