

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

IN THE MATTER OF TEMPORARY )  
APPLICATIONS 80824-T, 80828-T AND )  
80829-T FILED TO CHANGE THE )  
PLACE AND MANNER OF USE OF A )  
PORTION OF THE WATERS OF )  
SHERIDAN CREEK, GANSBERG )  
SPRING AND STUTLER CREEK, )  
RESPECTIVELY, WITHIN THE CARSON )  
VALLEY HYDROGRAPHIC BASIN )  
(105), DOUGLAS COUNTY, NEVADA. )

**RULING**

**#6123**

**GENERAL**

**I.**

Temporary Application 80824-T was filed on May 4, 2011, by the Bentley Family Trust, James W. Bentley, Trustee, to change the place of use of 0.281 cubic feet per second (cfs), not to exceed 95.04 acre-feet annually (afa), of the waters of Sheridan Creek, which is a portion of the water right claimed under Proof of Appropriation No. V-06339 and as determined in the Final 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 (a.k.a. Carey Creek), Monument Creek, and Bulls Canyon, Stutler Creek (a.k.a. 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 (hereinafter Carson Valley Adjudication). The existing manner and place of use is for irrigation of 23.76 acres located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 14 and the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 15, T.12N., R.19E., M.D.B.&M. from April 1 to October 15 of each year. The proposed place of use is described as being 12.93 acres of land located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$  and the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14, T.12N., R.19E., M.D.B.&M.<sup>1</sup>

---

<sup>1</sup> File No. 80824-T, official records in the Office of the State Engineer.

## II.

Temporary Application 80828-T was filed on May 6, 2011, by the Bentley Family Trust, James W. Bentley, Trustee, to change the place of use of 0.2321 cfs not to exceed 84.5583 afa of surface water from Gansberg Spring, which is a portion of Permit 7595, Certificate 1760. The existing manner and place of use is for irrigation of 23.76 acres located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$  and the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 14, T.12N., R.19E., M.D.B.&M. from April 1 to October 15 of each year. The proposed place of use is described as being 12.93 acres of land located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$  and the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 14.<sup>2</sup>

## III.

Temporary Application 80829-T was filed on May 6, 2011, by the Bentley Family Trust, James W. Bentley, Trustee, to change the place of use of 0.1 cfs not to exceed 35.40 afa of the waters of Stutler Creek as claimed under Proof of Appropriation No. V-06338 and as determined in the Final Order of Determination in the Carson Valley Adjudication. The existing manner and place of use is for irrigation of 23.76 acres located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$  and the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 14, T.12N., R.19E., M.D.B.&M. from April 1 to October 15 of each year. The proposed place of use is described as being 12.93 acres of land located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$  and the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 14.<sup>3</sup>

## IV.

Temporary Applications 80824-T, 80828-T and 80829-T were timely protested by Thomas J. Hall, Esq. as agent for Donald S. Forrester, Kristina M. Forrester, Hall Ranches, LLC, Thomas J. Scyphers, Kathleen M. Scyphers, Frank Scharo, Sheridan Creek Equestrian Center, LLC, Ronald R. Mitchell and Ginger G. Mitchell on the grounds that the applications propose that the manner of use of the water will remain irrigation; however, the Protestants assert that the water being diverted under these applications will be used for filling ponds located on the Bentley's property to raise fish rather than to irrigate.

---

<sup>2</sup> File No. 80828-T, official records in the Office of the State Engineer.

<sup>3</sup> File No. 80829-T, official records in the Office of the State Engineer.

## FINDINGS OF FACT

### I.

No objections were filed to the determination of water rights to Ernest E. Pestana, Trustee of the Pestana 1986 Family Trust, in the Preliminary Order of Determination for the Carson Valley Adjudication and no exceptions were filed in the Ninth Judicial District Court of the State of Nevada In and For Douglas County under Case No. 08-CV-0363-D, which is the judicial phase of the Carson Valley Adjudication. Therefore, the State Engineer finds that water rights under Proof of Appropriation No. V-06339, Permit 7595, Certificate 1780, and Proof of Appropriation No. V-06338 are valid and are within the jurisdiction of the State Engineer as set forth in NRS § 533.320 until such time that they may be modified by decree of the court.<sup>4</sup>

### II.

The State Engineer finds that a lease agreement signed by Jim Bentley, lessee, and Nathan Guido, Agent for the Pestana 1986 Family Trust, lessor, for the use of surface-water rights appurtenant to Douglas County APN 1219-14-001-014 was submitted by James Bentley in conjunction with temporary Applications 80824-T, 80828-T and 80829-T.<sup>5</sup>

### III.

After reviewing the protests, on May 25, 2011, Jim Bentley changed the manner of use under the applications to indicate that the water is to be used for fish propagation. The State Engineer finds that this change in manner of use addresses and resolves the grounds of the protest.

### IV.

The State Engineer finds that the 21-day rotation schedule approved by the District Court for the north split of Sheridan Creek and the commingled waters of Gansberg Spring and Stutler Creek purposely omitted water delivery to the Pestana

---

<sup>4</sup> **NRS 533.230 Division of water by State Engineer during time order of determination is pending in district court.** From and after the filing of the order of determination, evidence and transcript with the county clerk, and during the time the hearing of the order is pending in the district court, the division of water from the stream involved in such determination shall be made by the State Engineer in accordance with the order of determination.

<sup>5</sup> Lease Agreement between Pestana 1986 Family Trust and Jim Bentley, dated May 4, 2011, and May 3, 2011, respectively, Official Records in the Office of the State Engineer.

property in the 2011 rotation schedule. The omission of the Pestana property in the rotation schedule was recommended by the State Engineer's Office due to the current non-use of irrigation water on said land.

The court ordered rotation schedule was implemented as filed with the District Court by the State Engineer's Office and includes a statement that provides that "At such time as the Pestana parcel calls for irrigation water under a legitimate irrigation scheme by the owner or duly appointed agent of the owner the State Engineer shall modify the rotation schedule to include Douglas County Assessor's Parcel No. 1219-14-001-014."<sup>6</sup> Based on this provision of the rotation schedule, the State Engineer finds that the current owners of the Pestana property have made a legitimate call for their water during the 2011 irrigation season.

V.

The State Engineer finds that the applications do not need to be noticed under NRS § 533.345 (3) because the temporary change will not harm the public interest and will not impair water rights of other persons that share in the rotational use of these waters.

CONCLUSIONS

I.

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

II.

The State Engineer shall approve a temporary change application if:<sup>8</sup>

- A. The application is accompanied by the prescribed fees;
- B. The temporary change is in the public interest; and
- C. The temporary change does not impair the water rights held by other persons.

---

<sup>6</sup> 2011 Rotation Schedule as ordered by the Ninth Judicial District Court of the State of Nevada In and For Douglas County under Case No. 08-CV-0363-D, Dept. No. 1, April 15, 2011.

<sup>7</sup> NRS Chapter 533.

<sup>8</sup> NRS § 533.345.

**III.**

The State Engineer concludes that the temporary changes in manner and place of use do not adversely affect other water users in the rotation scheme of irrigation and it is in the public interest to allow the use of the water during the irrigation season.

**RULING**

The protests are overruled and Applications 80824-T, 80828-T and 80829-T are hereby approved for fish propagation purposes to October 15, 2011, subject to the payment of the statutory permit fees. The rotation schedule shall be modified to include the Pestana water claims in the rotation schedule for the remainder of the 2011-irrigation season with implementation beginning at the start of the next 21-day rotation schedule after approval by the District Court.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 8th day of  
June, 2011.