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

IN THE MATTER OF APPLICATION 81638 FILED TO CHANGE THE POINT OF DIVERSION, PLACE OF USE AND MANNER OF USE OF A PORTION OF THE PUBLIC WATERS PREVIOUSLY APPROPRIATED UNDER PERMIT 15227, CERTIFICATE 4828, AND APPLICATION 81639 FILED TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE OF A PORTION OF THE PUBLIC WATERS OF THE ORR DITCH DECREE CLAIMS 97/97A, ALL WITHIN THE TRUCKEE CANYON SEGMENT HYDROGRAPHIC BASIN (91), WASHOE COUNTY, NEVADA.	**RULING** **#6185**

GENERAL

I.

Application 81638 was filed on March 5, 2012, by the Belli Ranch Estates Association to change the point of diversion, place of use and manner of use of a portion of water previously appropriated under Permit 15227, Certificate 4828, amounting to 0.338 cubic feet per second and not to exceed 28.94 acre-feet annually of water from the Truckee River for "as decreed" purposes. The existing manner of use is for irrigation, stock and domestic purposes. The existing place of use is described as 37.90 acres within portions of Sections 14, 15, 22, and 23, T.19N., R.18E., M.D.B.&M. The proposed place of use is described as 27.98 acres within the S½ S½, NE¼ SW¼, and NW¼ SE¼ of Section 15, and N½ NE¼ of Section 22, T.19N., R.18E., M.D.B.&M. The existing point of diversion is described as being located within the NE¼ SW¼ of Section 31, T.19N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 16 and the NE¼ SW¼ of Section 31, T.19N., R.18E., M.D.B.&M.[1]

II.

Application 81639 was filed on March 5, 2012, by the Belli Ranch Estates Association to change the point of diversion and place of use of water previously appropriated under the *Orr Ditch* Decree,[2] specifically a portion of Claims 97/97A amounting to 0.237 cubic feet per second

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[1] File No. 81638, official records in the Office of the State Engineer.
[2] Final Decree, *United States v. Orr Water Ditch Co.*, In Equity Docket No. A-3 (D. Nevada 1944).

and not to exceed 48.72 acre-feet annually of water from the Truckee River for "as decreed" purposes. The existing manner of use is "as decreed." The existing place of use is described as 12.17 acres within portions of Sections 14, 15, 22, and 23, T.19N., R.18E., M.D.B.&M. The proposed place of use is described as 27.98 acres within the S½ S½, NE¼ SW¼, and NW¼ SE¼ of Section 15 and N½ NE¼ Section 22, T.19N., R.18E., M.D.B.&M. The existing point of diversion is described as being located within the NW¼ NE¼ of Section 16, T.19N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 16 and the NE¼ SW¼ of Section 31, T.19N., R.18E., M.D.B.&M.[3]

III.

Applications 81638 and 81639 were timely protested by Debi Horton on behalf of herself and Joe Campbell on grounds as summarized below:[1,2]

1. Federal 4 acre-feet per acre water law regarding 1944 Truckee River Orr Ditch Decree.
2. Nevada State Supreme Court Adaven Decision dated October 2008.
3. Lack of adherence to Court Order CV06-00007 issued by Judge Perry of the Washoe County District Court stating that "*Campbell/Horton have a pre-existing legal right to the land area depicted on the 1985 map* (reference is made to Permit Map 48742 filed in the State Engineer's Office) *x 4 acre-feet per acre.*
4. As proposed, these new permits add five properties for a total of 77.98 acres of ground while the total available water decreed to Belli Ranch is only 77.66 acre-feet which is 1 acre-foot per acre.
5. The 2011 Adams Stipulation does not supersede Judge Perry's Order.
6. The protest also contains attachments in support of the above claims (see File No. 81368).

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 533.365(4) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of Nevada. The State Engineer finds that in the case of protested Applications 81638 and 81639, there is

[3] File No. 81639, official records in the Office of the State Engineer.

sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

II.

The Applicant is seeking to change existing water rights in the amount of 77.66 acre-feet annually. The described place of use lists 33 parcels totaling 77.98 acres. The place of use further indicates the Applicant's intent to use water on 27.98 acres within the described 77.98 acres of land. The *Orr Ditch* Decree generally allows for the irrigation of land at 4 acre-feet of water per acre as noted by the Protestant. At the 4 acre-feet of water per acre duty, the 77.66 acre-feet of water would be sufficient to irrigate 19.415 acres of land within the proposed place of use. Describing a larger proposed place of use than the actual irrigated acreage is not uncommon and is generally allowed by the Nevada Division of Water Resources at this stage of the permitting process. If permits are issued, the Permittee will be required to file a Proof of Beneficial Use (PBU) affidavit specifically describing the 19.415 acres being irrigated along with a PBU Map prepared by a licensed water right surveyor illustrating the irrigated acreage by 40 acre subdivision. This is typically the last step to perfect a permitted water right and achieve a water right certificate on the permitted water.

The State Engineer finds that the duty of the decreed acreage within the boundaries of the subdivision is 4 acre-feet of water per acre, which limits the irrigable acreage to 19.415 acres within the proposed place of use.

III.

The protest cites to the Nevada State Supreme Court Adaven Decision dated September 11, 2008, (*Adaven*).[4] The *Adaven* decision is an important water rights decision because the Nevada Supreme Court clarified that water rights are separate and transferrable property interests that can be conveyed independently of the real property on which they are permitted to be used. In this case, the records on file in the Office of the State Engineer show that the Belli Ranch Estates Association is the owner of record for the water subject to change Applications 81638 and 81639 and there is nothing on file to indicate that there is a conflict in the chain of title. The Applicant is changing the water to a place of use within the confines of the Belli Ranch Estates subdivision boundary.

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[4] *Adaven Mgt., Inc. v. Mt. Falls Acq. Corp.*, 124 Nev. Adv. Op. 67, 191 P.3d (September 11, 2008).

The State Engineer finds that there is nothing within the *Adaven* decision or Nevada water law that prevents the filing and consideration of the proposed change applications.

IV.

The Protest alleges the lack of adherence to Court Order issued by Judge Perry of the Washoe County District Court in Case No. CV-06-00007. Case No. CV06-00007 was a matter between Debra Horton and Joseph Horton, Plaintiffs, and Belli Ranch Estates Association, et al., Defendants. The Office of the State Engineer was not a party to this matter. Judge Perry's Order granted the Plaintiff's motion for summary judgment and preliminary injunction and required the Defendants appoint a water master in accordance with a settlement agreement reached in an arbitration proceeding between the parties.[5]

Case No. CV09-03081 involved Stephen and Sally Edney; Philip and Arleen Huddleston; and James R. Smith, as Plaintiffs and Tracy Taylor, P.E., Nevada State Engineer, Department of Conservation and Natural Resources; State of Nevada, Defendant. The case was resolved through a Stipulation and Order to Resolve Action issued by the Second Judicial District Court of the State of Nevada, ordered on November 8, 2011, whereby it was stipulated that all the parties agreed to cooperate and that Robert Firth, water rights agent, was directed to file change applications with the Office of the State Engineer being consistent with the allocation system set forth in Exhibit 1 of the Order. It is noted in this Stipulation that should any wet lot owner not be satisfied with the final decision of the Board (Belli Ranch Estates Association Board of Directors), this Court shall retain jurisdiction to adjudicate such issues under Case No. CV06-00007. Stephen and Sally Edney, Phillip and Arleen Huddleston, and James R. Smith, are added as parties to Case No. CV06-00007 and, as noted, the Court retains jurisdiction under that case number.[6]

The State Engineer finds that Applications 81368 and 81369 are in accordance with the Stipulation. The State Engineer finds that the Court has continuing jurisdiction to adjudicate

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[5] *Debra Horton and Joseph Horton, vs. Belli Ranch Estates Association, a Nevada non profit cooperative corporation; Steven N. Herman; Barbara A. Herman; Floyd W. Lewis, Jr.; Susan Lewis, individuals; and Does I_X, inclusive*, Case No. CV06-00007, Second Judicial District Court of Nevada, In and For the County of Washoe, Oct. 13, 2008.

[6] *Stephen and Sally Edney; Philip and Arleen Huddleston; and James R. Smith v.Tracy Taylor, P.E., Nevada State Engineer, Department of Conservation and Natural Resources; State of Nevada*, Case No. CV09-03081, Second Judicial District Court of Nevada, In and For the County of Washoe, Nov. 8, 2011.

issues under Case No. CV06-00007 and this ruling is a necessary step to allow these issues to move forward.

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 a permit under a change application that requests 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 protectable 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 the Applicant is the owner of record of the water to be changed under the applications. The State Engineer concludes that the Protestants are not owners of record of the water rights proposed to be changed by Applications 81638 and 81639, and will not be treated as such.

IV.

The State Engineer concludes that the intent of the limitation on changing the place of use of water rights appurtenant to lands within the Belli Ranch Estates applies to keeping the water rights within the subdivision. The State Engineer concludes that the applications were prepared as mandated by the Stipulation and will not conflict with existing rights or threaten to prove detrimental to the public interest.

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[7] NRS Chapter 533.
[8] NRS § 533.370(2).

V.

The State Engineer concludes that the Court will maintain jurisdiction to adjudicate issues under Case No. CV06-00007 and the Protestants are a party to that case. The State Engineer concludes that based on the findings the protest may be overruled.

VI.

The State Engineer concludes that issues regarding compliance with Belli Ranch Homeowners' Association bylaws is a civil matter and not within the jurisdiction of the State Engineer.

RULING

The protests to Applications 81638 and 81639 are hereby overruled and the applications are granted subject to:

1. the payment of statutory fees;
2. existing rights; and
3. continuing jurisdiction and regulation by the Federal Water Master.

Respectfully submitted,

JASON KING, P.E.
State Engineer

Dated this 20th day of

July, 2012.