

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

IN THE MATTER OF APPLICATION 85157T)
FILED TO CHANGE THE POINT OF DIVERSION)
AND PLACE OF USE OF GROUNDWATER)
PREVIOUSLY APPROPRIATED UNDER CLAIM)
NO. V-04659 IN THE CARSON VALLEY)
HYDROGRAPHIC BASIN, DOUGLAS COUNTY,)
NEVADA.)

RULING

#6333

GENERAL

I.

Application 85157T was filed on May 8, 2015, by the Bently Family Limited Partnership to change the point of diversion and place of use of 5.0 cubic feet per second of water for the irrigation of 1,240 acres previously appropriated under Proof of Appropriation V-04659. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T.13N., R.20E., M.D.B.&M. The existing point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T.13N., R.20E., M.D.B.&M. The proposed place of use is described as being located within the S $\frac{1}{2}$ of Section 21; SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 22; W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 23; NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26; N $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 27 and N $\frac{1}{2}$ of Section 28, all within T.13N., R.20E., M.D.B.&M. The existing place of use is described as being located within the S $\frac{1}{2}$ of Section 21; SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 22; W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 23; NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26; N $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 27 and N $\frac{1}{2}$ of Section 28, all within T.13N., R.20E., M.D.B.&M.¹

FINDINGS OF FACT

I.

As the frequency for filing applications to change pre-statutory claims of vested water rights has increased, the State Engineer's concern over and scrutiny of base rights that are pre-statutory claims of vested water rights, has likewise increased. The State Engineer requires adequate evidence from which he could reasonably conclude that the claim is most likely valid before acting on an application to change any such unadjudicated claim of a pre-statutory vested

¹ File No. 85157T, official records in the Office of the State Engineer.

water right.² Nothing in acting on the pending application is intended to preclude the application of NRS §§ 533.090 *et seq.* nor to supplant a later determination by a court of the extent of the pre-statutory vested water right, nor is the right to have the matter finally adjudicated by the courts taken away.

Proof of Appropriation V-04659 was filed on May 16, 1988, asserting a pre-statutory vested underground water right for irrigation purposes. The proof claimed the irrigation of 1,240 acres and a diversion rate of 5.0 cubic feet per second. Minimal information had been submitted in support of Proof of Appropriation V-04659.³ By letter dated May 20, 2015, the Office of the State Engineer requested additional information be provided by June 15, 2015, or Application 85157T would be denied.¹

The Applicant filed a response to the letter on June 15, 2015. The response stated that the Applicant couldn't find any information regarding the well prior to 2000, which is when the Applicant drilled a replacement well. The response also stated that the property had changed ownership four times since 1928 and no information could be located. Finally, the letter stated that this well was also used for stockwater from October to April from 1928 to 1998. None of the information requested by the State Engineer was provided in the response from the Applicant.

The State Engineer finds that without substantial proof of the existence of this water right sought to be changed, there is no water that can be changed under Application 85157T and the application is subject to denial.

II.

The owners of record in the Office of the State Engineer of Proof of Appropriation V-04659 are the Bently Family Limited Partnership as to a 3.387 cfs and 840 acre portion and Park Ranch Holdings, LLC, as to a 1.613 cfs and 400 acre portion. Application 85157T was filed by the Bently Family Limited Partnership to change the entire 5 cfs and 1,240 acres claimed under Proof of Appropriation V-04659. No report of conveyance updating title for the application or the proof is on file with the Office of the State Engineer. The State Engineer finds that the

² For example, recent decisions of the State Engineer include approval of Permits 70760, 71928 and 72898 and denial of Applications 70759, 77260, 84144T and 84484T for insufficient evidence.

³ File No. V-04659, official records in the Office of the State Engineer.

Applicant is not the owner of record of the entire base right proposed to be changed by Application 85157T.

CONCLUSIONS OF LAW

I.

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

II.

Before either approving or rejecting an application, the State Engineer may require such additional information from the applicant as will enable him to properly guard the public interest.⁵

III.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:⁶

- 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.

IV.

The State Engineer concludes that the Applicant under Application 85157T has failed to provide substantial evidence of the existence of the water right it seeks to change under the application, thus, there is no water appropriated that supports Application 85157T.

V.

The State Engineer concludes granting an application to change a base right, when the Applicant is not the owner of record of the water right to be changed, would threaten to prove detrimental to the public interest.

⁴ NRS Chapters 533 and 534.

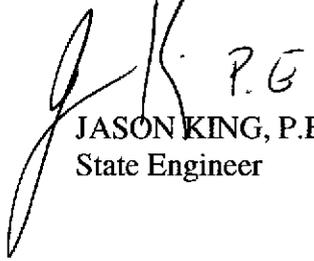
⁵ NRS § 533.375.

⁶ NRS § 533.370(2).

RULING

Application 85157T is hereby denied on the grounds that there is no proof that the water sought to be changed is water already appropriated at the source, and to permit the use of an unadjudicated and unsubstantiated water right would threaten to prove detrimental to the public interest; as well, approval of an application to change a water right not wholly owned by the Applicant would also threaten to prove detrimental to the public interest.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 13th day of
January, 2016.