

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

ORDER

1130

Mr. Bartley O'Toole
Route 1, Box 13
Austin, Nevada 89310
Certified Mail #P 251 334 779

WHEREAS, Nevada Revised Statute 535.010 prohibits the construction of a dam, or storage of or use of water impounded by such dam without notification to and in some case permission from, the State Engineer for such construction, use or storage; and

WHEREAS, the State Engineer has not issued Bartley O'Toole a dam permit; and

WHEREAS, the records of the office of the State Engineer indicate claims of vested rights for use of the waters of the Reese River on lands controlled by The Yomba-Shoshone Tribe and Bartley O'Toole. The Yomba-Shoshone Tribe's claim and other appropriators are downstream from the O'Toole diversion dam mentioned below. The claims of vested rights are for irrigation and stockwatering purposes; and

WHEREAS, a field investigation made by the State Engineer's staff found that Bartley O'Toole has constructed a diversion dam on the Reese River to a height and size as to impound and/or divert the entire flow of the river allowing no water to bypass the structure to the detriment of downstream water right claimants; and

WHEREAS, Nevada Revised Statute 533.460 prohibits the unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another; and

WHEREAS, Nevada Revised Statute 533.060 (1) provides that the use of water shall be limited and restricted to so much thereof as may be necessary, when reasonably and economically used for irrigation and other beneficial purposes; and

WHEREAS, Nevada Revised Statute 536.080 provides that a person constructing or maintaining a ditch or flume under the provisions of NRS 536.060 to 536.090 shall be so construed as not to interfere with any prior or existing claim or right.

NOW THEREFORE, is ordered that Bartley O'Toole shall modify the existing diversion dam structure, so as to pass one-half of the flow of Reese River to the downstream user(s) until such time as the limit and extent of the claims of vested rights are adjudicated pursuant to NRS 533.090 through 533.320, inclusive. You are further ordered to insure the waters of the Reese River and silt may pass downstream in the natural stream course.


R. MICHAEL TURNIPSEED, P.E.
State Engineer

Dated at Carson City, Nevada, this

27th day of May 1997.