

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

1137

O R D E R

Mr. Bartley O'Toole  
Route 1, Box 13  
Austin, Nevada 89310  
Cert. Mail No. P 251 335 637

Maurice Frank  
Yomba Tribe  
HC 61, Box 6275  
Austin, Nevada 89310  
Cert. Mail No. P 251 335 638

**WHEREAS**, a controversy arose in the spring of 1997 concerning the delivery of water on the Reese River between the Yomba-Shoshone Tribe and the O'Toole Ranch; 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 for Bartley O'Toole, those claims of vested rights being for irrigation and stockwatering purposes; and

**WHEREAS**, the Tribe's reported waste of water by Mr. O'Toole and the lack of water at the Tribe's points of diversion are not totally due to actions taken by those at the O'Toole Ranch; and

**WHEREAS**, storage of water behind a dam was reported to the alleged detriment of the Yomba-Shoshone Tribe; and

**WHEREAS**, a field investigation by the State Engineer's office on December 3, 1997, revealed that the following exists:

- A. the dam on the O'Toole Ranch is a diversion dam and not a dam for impounding a significant amount of water, said diversion dam has a bypass capacity to pass all but the highest flows of the Reese River;
- B. the conditions of the natural channel of the Reese River are in disrepair and cause the waters not to flow as they once did;
- C. the Reese River channel is completely filled with silt and debris from bank to bank;
- D. the diversion dam and headgates used to deliver water to the Tribe are completely obliterated and covered by silt with only the gate stem visible above the silt bed;

- E. the valley bottom and remnants of the Reese River channel are completely choked with willow growth to the point that there is no method of delivery of water to the tribal lands;
- F. the flow of the Reese River submerges and resurfaces from the ground as it flows through the valley;

**WHEREAS**, the State Engineer cannot distribute the waters of the Reese River for lack of an adjudication under the provisions of NRS § 536.090 through 533.320; and

**WHEREAS**, the State Engineer erroneously issued Order No. 1130 on May 27, 1997; and

**WHEREAS**, State Engineer Order No. 766 of May 19, 1981, has been substantially complied with and operates not to the detriment of the Yomba-Shoshone Tribe; and

**NOW THEREFORE**, it is hereby ordered that State Engineer Order No.1130 dated May 27, 1997, is hereby rescinded and since Order No. 766 dated May 19, 1981, has been complied with, it not longer has any effect on the waters of the Reese River.

  
R. MICHAEL FURNISSEED, P.E.  
State Engineer

Dated at Carson City, Nevada this  
6th Day of JANUARY, 1998.