

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

IN THE MATTER OF APPLICATION 7573)
FILED TO CHANGE THE POINT OF DIVERSION)
OF WATER PREVIOUSLY APPROPRIATED FROM)
DEEP CREEK IN MONO COUNTY, CALIFORNIA.)

RULING
4645

GENERAL

I.

Application 7573 was filed November 16, 1925, by C.E. Wedertz to change the point of diversion of waters previously appropriated under Permit 5591. Permit 5591 which was granted to appropriate 640 acre-feet annually of the waters of Deep Creek in Mono County, California, to be conveyed through Desert Creek for the irrigation of 160 acres within the SE¼ of Section 16, T.10N., R.24E., M.D.B. & M., Smith Valley, Lyon County, Nevada.^{1,2}

Application 7573 proposes to change the point of diversion of Permit 5591 from Deep Creek to the SE¼ SE¼ of Section 20, T.7N., R.24E., M.D.B. & M., Mono County, thence through a ditch to Lobdell Lake, and then from Lobdell Lake through the channel of Desert Creek to a second diversion point described as being located within the SW¼ SE¼ of Section 20, T.10N., R.24E., M.D.B. & M., Lyon County, Nevada. Application 7573 also proposes to change the 640 acre-feet of storage water granted under Permit 5591 to the direct diversion of 1.6 cfs (cubic feet per second) for irrigation of the same place of use.¹

Application 7573 was timely protested by Hunewill Land & Livestock Company, F.W. Simpson, and the Walker River Irrigation District.¹

¹ File No. 7573, official records in the office of the State Engineer.

² File No. 5591, official records in the office of the State Engineer.

II.

Application 5591 was filed July 2, 1919, by C.R. Wedertz to appropriate 640 acre-feet annually of water from Deep Creek in the SE¼ NW¼ of Section 28, T.7N., R.24E., M.D.B. & M., Mono County, California, thence through the channel of Desert Creek to a second diversion point described as being in the NE¼ SW¼ of Section 17, T.8N., R.24E., M.D.B. & M., Lyon County, Nevada. The place of use is described as 160 acres of land within the SE¼ of Section 16, T.10N., R.24E., M.D.B. & M., Lyon County, Nevada. Permit 5591, granted on March 14, 1921, contained conditions stating that this permit was an appropriation of water from Deep Creek; therefore, no right to any of the waters of Desert Creek was granted, and that a standard headgate and weir were to be installed where water diverted from Deep Creek enters Desert Creek, and at the point of diversion from Desert Creek, in order to ensure that there would be no interference with the flow of Desert Creek. Title to Permit 5591 was assigned by the office of the State Engineer to C.E. Wedertz effective March 26, 1923.²

III.

The State Engineer's records contain a map filed April 30, 1927, by C.E. Wedertz. This map consisting of two pages is filed under Permit 5591, but depicts Deep Creek and Desert Creek, Lobdell Lake, and diversion points at locations more representative of Application 7573. The map describes 32.5 acres of alfalfa (culture) in the S½ SE¼ and the SE¼ SW¼ of Section 16, T.10N., R.24E., M.D.B. & M., Lyon County, Nevada.²

IV.

The State Engineer denied Applications 16970 and 25014 on the grounds that granting permits would impair the value of existing water rights and would be detrimental to the public welfare. Both applications proposed to divert water from Desert Creek for the

irrigation of lands which include the SE¼ of Section 16, T.10N., R.24E., M.D.B.& M.^{3,4}

V.

The State Engineer granted Permit 23627 on August 15, 1967, and issued Certificate 8205 for Permit 23627 on December 18, 1973, for 624 acre-feet annually of underground water for the irrigation of 156 acres in the E½ SW¼ and SE¼ Section 16, T.10N., R.24E., M.D.B.& M. The owner of record of this underground water right is F.I.M. Corp.⁵

FINDINGS OF FACT

I.

The waters of Deep Creek and Desert Creek are tributary to the West Walker River and are managed and distributed according to the decree of the United States District Court for the District of Nevada (the Walker River Decree), judgment of April 14, 1936.⁶ Prior to the Walker River Decree, the waters of the Walker River were managed and distributed according to the decree of the United States District Court, Decree No. 731, in the case of Pacific Live Stock Company vs. T. B. Rickey, et al., judgment of March 22, 1919.⁷ The State Engineer finds that lands described as the entire place of use under Application 7573 and Permit 5591 are not included in either Decree No. 731 or Decree C-125.

³ File No. 16970, official records in the office of the State Engineer.

⁴ File No. 25014, official records in the office of the State Engineer.

⁵ File No. 23627, official records in the office of the State Engineer.

⁶ Final Decree, United States of America vs. Walker River Irrigation District, In Equity, Docket No. C-125 (D. Nev. 1936).

⁷ Decree No. 731, Pacific Live Stock Company vs. T. B. Rickey, et al., (D. Nev. 1919).

II.

On September 3, 1953, the United States District Court for the District of Nevada, sitting as the Walker River Decree Court, approved rules and regulations for distribution of water on the Walker River stream system. The State Engineer finds that part of the rules and regulations direct the actions of the Chief Deputy Water Commissioner as to excess of flood waters: "If at any time the Chief Deputy Water Commissioner determines that there is more water available in the stream than is required to fill the rights of all vested users including the rights of the Walker River Irrigation District and others similarly situated to store water, then he shall prorate such excess water to all users in proportion to the rights already established."⁸

III.

The State Engineer finds that records of the Division of Water Resources show that C.E. Wedertz has title to Permit 5591 and Application 7573, and no deeds are on file to transfer ownership of either Permit 5591 or Application 7573 to additional parties.^{1,2}

IV.

The State Engineer finds that Proof of Completion of Work and Proof of Beneficial Use, or Applications for Extension of Time have not been required nor filed under Permit 5591.²

V.

The State Engineer finds that the records of the Division of Water Resources show that water from Permit 5591, or as proposed by Application 7573, has not been placed to beneficial use in the SE¼ of Section 16, T.10N., R.24E., M.D.B. & M., Lyon County, in more than 40 years, and that there has been a lack of notice, interest, or response by C.E. Wedertz to inquiries or activities in the SE¼ of Section 16 in more than 60 years summarized as follows:

⁸ Order Approving Rules and Regulations for Distribution of Water on the Walker River System, U. S. vs. Walker River Irrigation District, In Equity C-125, September 3, 1953.

A letter dated October 14, 1935, was sent to C.E. Wedertz inquiring if he still has interest in Application 7573. The file has no response to this letter.¹

Application 16970 was filed by Fred M. Fulstone, Jr., on June 21, 1956, with a portion of the place of use being the SE¼ of Section 16. The map for the application was filed on September 7, 1956. Application 16970 was protested, but not by C.E. Wedertz.³

A field investigation of Applications 16970 and 7573 was conducted on August 12, 1958. Investigation of Application 7573 was cancelled because of unforeseen difficulty in traveling to points of diversion.^{1,3}

Deeds submitted by Fred M. Fulstone, Jr., on November 17, 1958, were returned on November 20, 1958, as having no bearing on the transfer of ownership from C.E. Wedertz.^{1,2}

Application 23627 and map were filed by Fred M. Fulstone, Jr., on January 23, 1967, with a portion of the place of use being the SE¼ of Section 16. Application 23627 was protested, but not by C.E. Wedertz.⁵

A letter dated March 20, 1969, was sent to C.E. Wedertz inquiring if he still had an interest in Application 7573. The letter was returned on March 25, 1969, by the United States Post Office marked "Addressee Unknown".¹

Application 25014 was filed by Fred M. Fulstone, Jr., on April 10, 1969, with a portion of the place of use being the SE¼ of Section 16. The map for the application was filed on July 3, 1969. Application 25014 was protested, but not by C.E. Wedertz.⁴

A letter dated August 15, 1969, was received by the State Engineer from counsel for Fred M. Fulstone, Jr., stating that Mr. Fulstone was interested in further action on Application 7573. However, no deeds were filed transferring ownership of Application 7573 to Mr. Fulstone or other requests made.¹

The Proof of Beneficial Use and cultural map for Permit 23627 was filed on August 8, 1973. The map jurat states a survey was made July 25, 1973, and fully and correctly designated the approximate location and size of the diverting channel, all reservoirs or basins, the location and names of all other works which will cross or connect with the proposed works, and the boundary of all lands. A field investigation was made on September 7, 1973. The proof, cultural map, and field

investigation shows no Desert Creek water being used in the SE¼ of Section 16.⁵

A field inspection conducted on September 25, 1997, found no diversion ditches from Desert Creek to the SE¼ of Section 16.^{1,2}

VI.

The field inspection made by personnel from the Nevada Division of Water Resources on September 25, 1997, in the area near the place of use of Permit 5591 and Application 7573 found that water conveyed through Desert Creek could not be placed on the place of use because there were no diversion ditches to service the place of use and no pressure pumps to supply surface water to the pivot sprinkler system used under Permit 23627, Certificate 8205.^{1,2}

About three miles upstream on Desert Creek from the place of use under Permit 5591 and Application 7573, Desert Creek is diverted and conveyed by a private concrete v-ditch system to lands under the Walker River Decree Claim Nos. 172 and 173. The Desert Creek channel then becomes a dry wash unless streamfloods exceed the capacity of the v-ditch system and overflows to the wash. Desert Creek near the S¼ of T.10N., R.24E., M.D.B. & M., is typical of a desert wash with intermittent streamfloods of spasmodic and impetuous flow. East of the Desert Creek Wash adjacent to the place of use of Permit 5591 and Application 7573 is another desert wash, that of Four Mile Hill Creek.⁹

The State Engineer finds that water from Deep Creek conveyed through Desert Creek cannot be placed to beneficial use on the place of use under Permit 5591 and Application 7573 because streamflow in Desert Creek is diverted and conveyed by a private v-ditch system to decreed lands. Any water in the Desert Creek Wash cannot be placed to beneficial use on the place of use because the wash of Four Mile Hill Creek is between the Desert Creek Wash and

⁹ U.S. Geological Survey 7½ minute topographic map, Desert Creek Ranch, Nevada Provisional Edition 1988.

the place of use and there are no diversion ditches for conveyance of water from the Desert Creek system nor pressure pumps to supply pivot irrigation.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁰

II.

Beneficial use shall be the basis, the measure and the limit of the right to the use of water.¹¹

III.

The State Engineer is prohibited by law from granting a permit under a change application to appropriate the public waters where:¹²

1. the proposed use conflicts with existing rights; or
2. the proposed use threatens to prove detrimental to the public interest.

IV.

The waters of Deep Creek and Desert Creek have been administered by court decree since March 22, 1919, prior to the filing of Application 5591 on July 2, 1919, and the lands described as the place of use under Application 7573 and Permit 5591 are not included in Decree No. 731 nor the Walker River Decree C-125. The claims for Water of Deep Creek and Desert Creek have earlier priority dates as granted under the decrees than the priority date of either of Application 7573 or Permit 5591. The United States District Courts have held in Decree Nos. 731 and C-125 that water from Deep Creek conveyed through Desert Creek and water from Desert Creek is to provide water to lands now described as Claim No. 172

¹⁰ NRS § Chapter 533.

¹¹ NRS § Chapter 533.035.

¹² NRS § 533.370(3).

of Decree C-125 and the remaining water in Deep Creek is to flow down the stream course to the West Walker River to other decreed rights. The State Engineer concludes that the water from Desert Creek is to provide water to lands now described as Claim Nos. 172 and 173 of Decree C-125.

V.

The State Engineer concludes that rules and regulations issued by the United States District Court, District of Nevada, direct the Chief Deputy Water Commissioner in the matter of flood waters of the Walker River stream system to prorate excess water to all users in proportion to established rights.

VI.

It is the responsibility of the applicant or permit holder to keep the State Engineer informed as to his address and his interest in an application or permit. The files of the State Engineer show no correspondence from C.E. Wedertz since before 1935, and only letters from others expressing interest in Application 7573 and Permit 5591. The State Engineer concludes that there are no deeds or other instruments to transfer ownership of the permit or application in the files of the Division of Water Resources.

VII.

The State Engineer concludes that the granting of a permit for Application 7573 would conflict with existing rights as to decreed claims on the waters of Deep Creek, storage in Lobdell Lake, and use of water in the Desert Creek system; and would threaten to prove detrimental to the public interest.

VIII.

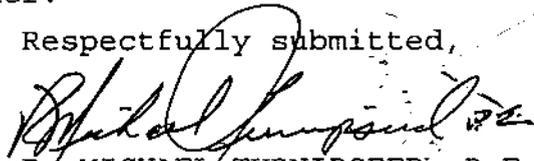
The State Engineer concludes that Permit 5591 should be cancelled because of the lack of interest shown by the permit holder C.E. Wedertz for more than 60 years.

RULING

Application 7573 is hereby denied on the grounds that the granting of a permit would conflict with existing rights and would threaten to prove detrimental to the public interest. No findings nor ruling is made as to the merits of the protests to Application 7573.

Permit 5591 is hereby cancelled because of lack of interest shown by the permit holder.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/CAB/cl

Dated this 9th day of
July, 1998.