

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

IN THE MATTER OF APPLICATION )  
65359-T FILED TO CHANGE THE PLACE )  
OF USE OF A PORTION OF THE DECREED )  
WATERS OF THE TRUCKEE AND CARSON )  
RIVERS FOR USE WITHIN THE CARSON )  
DESERT HYDROGRAPHIC BASIN, (101), )  
CHURCHILL COUNTY, NEVADA. )

RULING

# 4982

GENERAL

I.

Application 65359-T was filed on July 27, 1999, by the United States of America, Fish and Wildlife Service to change the place of use of 397.43 acre-feet of Truckee River and Carson River water; that being a portion of the water heretofore appropriated under Serial Nos. 23, 161, 723 and 750 United States of America v. Orr Ditch Co., Equity No. A-3, Claim No. 3; United States of America v. Alpine Land and Reservoir Co., No. D-183 BRT. The proposed manner and place of use is for the irrigation of 113.55 acres of land located within the Stillwater National Wildlife Refuge. The proposed place of use is more specifically described as 36.95 acres within the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 7.10 acres within the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 7.25 acres within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  and 29.25 acres within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 7, T.19N., R.31E., M.D.B.&M., 28.90 acres within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 18, T.19N., R.31E., M.D.B.&M. and 4.10 acres within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 13, T.19N., R.30E., M.D.B.&M.<sup>1</sup>

II.

Application 65359-T was timely protested by the City of Fallon and Churchill County. Both protestants requested the State Engineer to deny Application 65359-T on the grounds that its approval would adversely affect existing water rights and prove detrimental to the public interest.<sup>1</sup>

<sup>1</sup> File Number 65359-T, official records in the office of the State Engineer.

**FINDINGS OF FACT**

**I.**

Application 65359-T was filed by the United States Fish and Wildlife Service to change the place of use of water within the Newlands Reclamation Project. Initially, the office of the State Engineer evaluated Application 65359-T as a temporary change that could be permitted on a temporary basis. By letter dated September 21, 1999, the applicant was advised that Application 65359-T was ready for approval pending the applicant's submittal of the \$200.00 permit fee. The applicant responded to this request by submitting the permit fees to the office of the State Engineer on September 24, 1999.<sup>1</sup> The State Engineer finds that the request for permit fees was made with the assumption that the change proposed by Application 65359-T was an undisputed temporary change.

**II.**

The temporary permitting process does not always require the public noticing and protest periods mandated under the Nevada Revised Statutes for applications that request permanent changes.<sup>2</sup> These requirements are omitted strictly to expedite the permitting process to offer the public immediate relief to unforeseen water supply problems. The State Engineer finds that the temporary change provision that was added to the Nevada Revised Statutes in 1989 was not intended for disputed changes.

**III.**

The City of Fallon and Churchill County timely protested Application 65359-T.<sup>1</sup> The State Engineer finds that regardless of the merits of the respective protests, the fact that two governmental agencies protested the granting of this application disqualifies it from the temporary change procedure.

**IV.**

All water rights applications, with the exception of those filed for temporary changes or environmental remediation must be

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<sup>2</sup> NRS § 533.345 and 533.360(1).

published in accordance with the provisions of NRS § 533.360. Since Application 65359-T can no longer be considered a temporary application, it is subject to the statutory publication requirements, including the payment of the \$50.00 publication fee.<sup>3</sup> Although the applicant has previously submitted permit fees in the amount of \$200.00, no portion of this fee can be used towards the publication cost.<sup>1</sup> The State Engineer finds that before Application 65359-T can proceed through the permitting process, the applicant must submit the statutory publication fees.

V.

By letter dated November 23, 1999, the applicant was advised that in order for the permitting process to proceed, the \$50.00 publication fee must be submitted to the State Engineer's office.<sup>1</sup> To this date, more than ten months have passed without a response or publication fees received from the applicant. The State Engineer finds that the applicant has been allowed sufficient time to evaluate the reclassification of Application 65359-T from a temporary to permanent change and has chosen to forsake the filing of the publication fees as well as the pursuit of the application.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>4</sup>

II.

Under the provisions of NRS 533.371(2), the State Engineer shall reject an application if he determines that the prescribed fees have not been paid. The State Engineer concludes that the applicant has failed to submit the required publication fees; therefore, Application 65359-T must be rejected.

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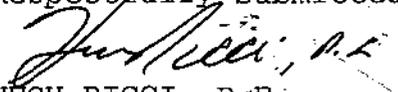
<sup>3</sup> NRS § 533.435(1).

<sup>4</sup> NRS chapter 533.

RULING

Application 65359-T is hereby denied on the grounds that the applicant has failed to submit the statutory publication fees to the office of the State Engineer. No ruling is made on the merits of the respective protests.

Respectfully submitted,

  
HUGH RICCI, P.E.  
State Engineer

HR/MDB/cl

Dated this 7th day of  
November, 2000.