

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

IN THE MATTER OF APPLICATION)
57427 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF BOYNTON)
SLOUGH WITHIN THE TRUCKEE)
MEADOWS HYDROGRAPHIC BASIN)
(087), WASHOE COUNTY, NEVADA.)

RULING

#5215

GENERAL

I.

Application 57427 was filed on April 13, 1992, by the Hidden Valley Country Club to appropriate 2.0 cubic feet per second of the excess flows of Boynton Slough. The proposed manner and place of use is for recreation (golf course) and domestic purposes within a portion of the S½ of Section 22, and portions of Section 27, T.19N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of said Section 22. The intent of Application 57427 is further defined within the remarks section of the application, which states that it was filed to appropriate all water which may be declared forfeited in the case cited, Hidden Valley Properties v. Turnipseed, Case No. CV 92-01972, Dept. No. 3, Washoe County.¹

II.

Application 57427 was timely protested by the Truckee Carson Irrigation District on the following grounds:

This is a new application to appropriate surface water from the Boynton Slough which is tributary to the Truckee River. Such a diversion will adversely affect senior downstream water right holders on the Truckee River Such as the TCID.

Therefore, the Truckee Carson Irrigation District respectfully requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.¹

¹ File No. 57427, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Application 57427 requests a new appropriation of water from Boynton Slough, which is part of the ditch and drain system constructed to convey Truckee River water throughout the Truckee Meadows and outlying areas, primarily for agricultural purposes.² The relative use of the waters of the Truckee River was determined through the adjudication process with the final determination set forth in the Orr Ditch Decree.³ The State Engineer finds that Application 57427 requests a new appropriation of water from a decreed source.

II.

The extent to which the waters of the Truckee River system are appropriated under existing water rights can be determined through an examination of the Orr Ditch Decree and the records of the Office of the State Engineer. Almost all of the water that is currently appropriated from the Truckee River originates from decreed water rights. It was determined during the adjudication process, that the amount of water claimed under decreed water rights was below the level that would have justified a Declaration of Full Appropriation in the decree. The State Engineer finds this determination allowed additional water to be requested from the Truckee River under the State Engineers permitting process.³

III.

The allocation and appropriation of water from a stream system in Nevada is based upon the priority of the water rights, in which the water demands of a senior right must be fully satisfied before a junior right can be served. The priority of Application 57427 was determined by its date of filing within the Office of the State Engineer, which is April 13, 1992. This

² Steamboat, Nevada 7.5 minute topographic map, 1967, revised 1982, United States Geologic Survey.

³ Final Decree, U.S. v. Orr Water Ditch Co., In Equity A-3 (D. Nev. 1944) ("Orr Ditch Decree").

priority date places Application 57427 behind Applications 9330, 48061 and 48494. These senior water right applications share a common characteristic, in that the actions taken by the State Engineer, denying Application 9330 and approving Applications 48061 and 48494, have been appealed and now stand before the courts.⁴ The final resolution of these appeals will determine which party will secure the right to the remaining unappropriated water found within the Truckee River. The State Engineer finds that the Truckee River will become a fully appropriated system once the legal challenges to Applications 9330, 48061 and 48494 have been resolved.

IV.

The State Engineer finds that the issue of water acquired through forfeiture as contemplated under Application 57427 is moot, since the senior claims to all the unappropriated water would encompass any water that would be returned to the Truckee River as the result of a final forfeiture of the subject decreed water rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an application 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;

⁴ File Numbers 9330, 48061 and 48494 official records in the Office of the State Engineer.

⁵ NRS chapter 533.

⁶ NRS § 533.370(3).

- C. the proposed use or change conflicts with protectible 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.

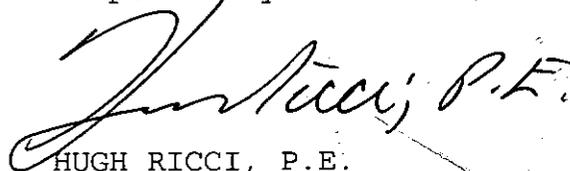
III.

Numerous decreed water rights currently appropriate water from the Truckee River. The eventual resolution of the appeals associated with Applications 9330, 48061 and 49484 will increase the committed resource of the Truckee River to a level where there will be no unappropriated water available for appropriation under Application 57427. The State Engineer concludes that the approval of additional water from a source that is fully appropriated would conflict with existing water rights and would threaten to prove detrimental to the public interest.

RULING

Application 57427 is hereby denied on the grounds that its approval would conflict with existing water rights and would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MDB/jm

Dated this 10th day of
February, 2003.