

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

IN THE MATTER OF APPLICATIONS 21610)
AND 21880 FILED TO CHANGE THE POINT)
OF DIVERSION AND PLACE OF USE OF)
THE PUBLIC WATERS OF BIG HIGH ROCK)
CREEK PREVIOUSLY APPROPRIATED UNDER)
PERMIT 11170, CERTIFICATE 3080,)
WITHIN THE HIGH ROCK LAKE VALLEY)
HYDROGRAPHIC BASIN (025), HUMBOLDT)
COUNTY, NEVADA.)

RULING
#5300

GENERAL

I.

Application 21610 was filed on November 4, 1963, by Ernest and Virginia Bresson to change the point of diversion and the place of use of 247.08 acre-feet per season of water from Big High Rock Creek, that being a portion of the water previously appropriated under Permit 11170, Certificate 3080. The proposed place of use is described as being 89.8 acres within portions of the NW¹/₄ NW¹/₄, NE¹/₄ NW¹/₄, SW¹/₄ NW¹/₄, and SE¹/₄ NW¹/₄ of Section 8, T.39N., R.24E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¹/₄ NW¹/₄ of Section 8, T.39N., R.24E., M.D.B.&M. The existing place of use is described as being 179.9 acres within portions of the E¹/₂ SW¹/₄, SW¹/₄ SE¹/₄, NW¹/₄ SE¹/₄, NW¹/₄ NW¹/₄, NE¹/₄ NW¹/₄, SW¹/₄ NW¹/₄, and SE¹/₄ NW¹/₄ of Section 8, T.39N., R.24E., M.D.B.&M. The existing point of diversion is located within the SE¹/₄ SE¹/₄ of Section 1, T.39N. R.23E., M.D.B.&M.¹

II.

Application 21880 was filed on March 18, 1964, by Ernest and Virginia Bresson to change the point of diversion and the place of use of 0.676 cfs, not to exceed 247.90 acre-feet per season, that being a portion of the water previously appropriated from Big High Rock Creek under Permit 11170, Certificate 3080. The proposed

point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T.39N., R.24E., M.D.B.&M. The proposed place of use is described as being 90.1 acres within portions of the E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T.39N., R.24E., M.D.B.&M. The existing point of diversion is located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T.39N. R23E., M.D.B.&M. The existing place of use is described as being 179.9 acres within portions of the E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T.39N., R.24E., M.D.B.&M.²

III.

Applications 21610 and 21880 were timely protested by Stanley L. Van Vleck on the following grounds:^{1,2}

In view of the present court action concerning these waters, the protestant contends that said waters are tributary to another stream system upon which said protestant has vested rights, and that the granting of this application will tend to impair the existing vested rights held by the protestant. The protestant therefore prays that this application be denied on the grounds that the granting thereof would tend to impair existing vested rights.

IV.

On May 11, 1995, title to Applications 21610 and 21880 was assigned to Michael B. Stewart in the records of the Office of the State Engineer.^{1,2}

FINDINGS OF FACT

I.

Applications 21610 and 21880 were filed to appropriate water from Big High Rock Creek. Application 21610 initially described its source of appropriation as High Rock Lake and its tributaries. Through the amended application process, this was changed to Big High Rock Creek. The application map, which was filed in support of Applications 21610 and 21880, depicts the proposed points of

¹ File No. 21610, official records in the Office of the State Engineer.

² File No. 21880, official records in the Office of the State Engineer.

diversion as being within close proximity to the high water level of High Rock Lake.³ Information contained within the remarks section of each of the applications indicates that it is the applicants' intention to move these existing points of diversion to locations near the shoreline of High Rock Lake. The entire diversion rate and annual duty, which had previously been appropriated at the existing point of diversion under Permit 11170, Certificate 3080 would be allowed to flow into High Rock Lake, where it would be collected and pumped from the reservoir to irrigate the proposed place of use.^{1,2} As it will be developed in this ruling, the composition of the water pooled within the lake goes beyond the source described in the amended applications. The State Engineer finds that the source targeted for appropriation by the subject applications is that portion of the reservoir impounded within High Rock Lake, which is derived exclusively from the flow of Big High Rock Creek.

II.

In the instance of the subject applications, it is important to define and examine the watershed that contains the existing source, Big High Rock Creek, and the proposed source, which is represented by High Rock Lake. Both of these water features are located within the Calico Mountains, approximately 65 miles north of Gerlach, near the Washoe-Humboldt County line. The flow path of Big High Rock Creek is oriented in a southeasterly direction and is for the majority of its length, confined within High Rock Canyon. The well defined coarse of this canyon is at times deeply incised into the Calico Mountains, which is a testament to the erosion produced by periods of high flow. After a considerable distance, this canyon daylights into the High Rock Lake area, where a natural meadow resides. A second tributary stream enters High Rock Lake immediately south of the point where Big High Rock Creek reaches the lake. This source is identified on the High

³ Water rights application map supporting Applications 21610 and 21880, filed under the lower number on March 18, 1964.

Rock Canyon 1:100 000 topographic map as Little High Rock Creek. Except for its shorter total length, the channel of Little High Rock Creek creates a landform, which is similar in appearance to that found at Big High Rock Creek.⁴ In addition to High Rock Lake, the waters of Little High Rock Creek are captured and stored within a second, smaller impoundment, represented by Little High Rock Reservoir. The location of this reservoir is upstream, approximately 8.0 miles to the west of High Rock Lake, therefore it represents one of its tributary sources of water.⁵ The State Engineer finds that based upon the drainage pattern depicted upon the topographic and aerial coverage for the High Rock Lake area, there is a high probability, that given sufficient recharge through seasonal precipitation, the waters of both Big High Rock Creek and Little High Rock Creek are tributary to High Rock Lake.

III.

This above finding is further supported by the field observations that were made and recorded during a 1971 informal site inspection. The information found within this report, which has been incorporated into the file maintained under Application 21610 clearly identifies Big and Little High Rock Creeks as the two main tributaries to High Rock Lake. At the time of the visit, High Rock Lake was described as a shallow reservoir, occupying 680 acres of land. No recommendation as to the approval or denial of Application 21610 was offered by the report.^{1,2} The State Engineer finds that there is sufficient information available to support a finding that the waters, which are commingled within High Rock Lake, arrive from two separate surface water sources.

IV.

Before a water right application, which requests a transfer of an existing point of diversion can be approved by the State Engineer, it must be determined that the proposed change will not

⁴ Aerial image obtained from MSN's Terraserver online website, image downloaded, printed and filed within File No. 21610, which is included within the official records in the Office of the State Engineer.

adversely affect existing water rights that appropriate water from the source in question.⁶ Regarding the subject applications, the potential for conflicts with existing water rights centers on the locations of the existing and proposed points of diversion. The existing points of diversion, which are located upstream from High Rock Lake, are limited by their position on this stream to water derived exclusively from Big High Rock Creek. This limitation does not exist at the proposed points of diversion, where the commingled water from Big High Rock Creek and Little High Rock Creek would be collected and pumped to the proposed place of use.^{1,2} This expands the source of water from Big High Rock Creek, to Little High Rock Creek and any other surface source, whose waters arrive at High Rock Lake. In the absence of continuous and well-maintained measuring devices, which would measure the inflow from Big High Rock Creek, there is no practical method to quantify and segregate the waters that collect within the lake to assure that the applicant is pumping only his allotment of Big High Rock Creek water. Depending upon the seasonal precipitation within the watershed, there will be occasions when the flow of Big High Rock Creek will be below the amount granted under Permit 11170, Certificate 3080. By moving their points of diversion to the lake, the applicants have the potential of appropriating not only the accumulated inflow from Big High Rock Creek, but also water collected from Little High Rock Creek that has been commingled within the lake. This creates an expansion of sources, which in turn may cause adverse impacts upon any downstream users, which depend upon water from High Rock Lake. The State Engineer finds that the approval of Applications 21610 and 21880 would create a situation where water from additional sources not permitted for appropriation under Permit 11170, Certificate 3080, would be collected and pumped to irrigate the proposed place of use.

⁵ Bureau of Land Management 1:100 000 High Rock Canyon topographical map, 1989.

⁶ NRS 533.370(3).

V.

The issue of tributary sources reaches beyond the western portion of the High Rock Lake drainage and must include an evaluation of to what extent the waters of the lake are utilized by downstream appropriators. The outflow of High Rock Lake occurs in an easterly manner and is contained within Fly Canyon. Eventually, this canyon merges into the Mud Meadows area whose lands have been historically irrigated from a variety of surface water sources. The irrigation of downstream land by use of water from High Rock Lake and its tributary streams and springs is evidenced by two claims of historic use, which have been assigned the serial numbers, V-01193 and V-02102. The proof filed under V-01193, is among a group of early proofs that were issued certificates of appropriation under the Nevada Water Law that existed prior to 1913. Changes in the water law eventually rendered these early certificates void. While the certificate that was issued under Proof V-01193 may no longer be recognized as valid, it still retains significant value as a descriptive record of the manner in which water was appropriated. Of particular importance is a statement contained within the remarks section of the proof. Here it is stated that, "Little High Rock Creek flows into High Rock Lake and then flows through High Rock Creek to Mud Meadows, where all the water is diverted and used by this claimant for the irrigation of said land".⁷ This statement, in itself, defines Little High Rock Creek and High Rock Lake as being tributary to the Mud Meadows area.

The second proof of prior appropriation is Proof V-02102, which is still considered to be an active claim of historic water use. This proof is currently assigned to Parman and Saffores with a possibility that ownership may be transferred to Estill Ranches at some later date. Proof V-02102 claims a priority date of 1887 for the use of the waters of Mud Meadows Creek primarily for

⁷ File No. V-01193, official records in the Office of the State Engineer.

irrigation purposes.⁸ The relevance of this proof and any relationship it may have with the subject applications is found on the cultural map, which was submitted in support of the proof. The ditches and irrigated lands portrayed by this map were surveyed in October 1914 and June 1927 and include an irrigation ditch located within the N½ of Section 36, T.40N., R.24E. M.D.B.&M. This ditch appears to irrigate neighboring areas of meadow and hay.⁹ If the trace of this ditch as it existed in 1914 and 1927 is compared to the 1972 USGS Mud Meadows, Nevada 7.5 minute topographic map, it appears that this ditch has retained its general location. By following the established course of this ditch, westward through Fly Canyon, a connection is eventually made with High Rock Lake.¹⁰

In summary, the use of High Rock Lake by downstream appropriators is documented by two proofs of appropriation of water for irrigation purposes. There is sufficient information within these proofs and the single supporting map to find that Applications 21610 and 21880, would, if approved, appropriate water from a lake whose waters are currently claimed for appropriation under Proof V-02102.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹¹

II.

The State Engineer is prohibited by law from granting an application that requests a change of an existing water right permit where:¹²

⁸ File No. V-02102, official records in the Office of the State Engineer.

⁹ Cultural Map filed under Proof V-02102, official records in the Office of the State Engineer.

¹⁰ United States Geological Survey, Mud Meadow Quadrangle, 7.5' topographic map, 1972.

¹¹ NRS chapter 533.

¹² NRS § 533.370(3).

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- 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.

Little High Rock Creek is a tributary source of water for High Rock Lake and points beyond. In order to reach the Mud Meadows area, the flow of this stream must pass through High Rock Lake at which point there exists a possibility that this water could be appropriated by the applicant. Currently, the applicant is only permitted for an appropriation from Big High Rock Creek at a point before its juncture with the lake. The State Engineer concludes that the approval of Applications 21610 and 21880 would carry with it the risk of appropriating water, which originates from sources other than Big Rock Creek and for which the applicants are not authorized to use.

IV.

Under the applicants' existing water right, the appropriation of surface water under Permit 11170, Certificate 3080, is limited to Big High Rock Creek. If the point of diversion under this certificated right was transferred downstream to High Rock Lake, as proposed by the applicants, the source of water would be expanded to include any tributary source whose flows had reached the lake and been commingled with Big High Rock Creek. This expansion of sources would, in turn, conflict with down stream users who put a portion of these waters to a beneficial use. The State Engineer finds that the approval of Applications 21610 and 21880 would conflict with existing water rights, which appropriate surface water from the Big High Rock Lake system.

V.

The State Engineer concludes that transfer of water rights from Big High Rock Creek to High Rock Lake as proposed under the subject applications would expand the use of water beyond the original source and would thereby threaten to prove detrimental to the public interest.

RULING

The protests to Applications 21610 and 21880 are upheld and Applications 21610 and 21880 are denied on the grounds that their approval would conflict with existing water rights and threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MDB/jm

Dated this 17th day of
October, 2003.