

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

IN THE MATTER OF PROTESTED)
APPLICATIONS 69227, 69228, 69229 AND)
69230 FILED TO CHANGE THE POINT OF)
DIVERSION, MANNER OF USE AND PLACE)
OF USE OF UNDERGROUND AND)
SURFACE WATER SOURCES PREVIOUSLY)
APPROPRIATED UNDER PERMIT 36216,)
CERTIFICATE 13351, PERMIT 65508, AND)
PERMIT 65730 WITHIN THE PLEASANT)
VALLEY HYDROGRAPHIC BASIN (88),)
WASHOE COUNTY, NEVADA.)

RULING

#5359

GENERAL

I.

Application 69227 was filed on October 9, 2002, by Montreux Golf Club, Ltd., to change the point of diversion, place of use, and manner of use of 45.7296 acre-feet, a portion of Galena Creek water previously appropriated under Permit 65730. The water is to be used for irrigation purposes within portions of the SW¹/₄ SW¹/₄, NW¹/₄ SW¹/₄, NE¹/₄ SW¹/₄, SE¹/₄ NE¹/₄ and all of the SE¹/₄ NW¹/₄, and the SW¹/₄ NE¹/₄ of Section 7, T.17N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¹/₄ SW¹/₄ of Section 7, T.17N., R.20E., M.D.B.&M. The existing place of use is described as being located within portions of the NW¹/₄ SW¹/₄, SW¹/₄ SW¹/₄, and NE¹/₄ SW¹/₄ of Section 2, NW¹/₄ SW¹/₄, SW¹/₄ SW¹/₄, NE¹/₄ SW¹/₄, SE¹/₄ SW¹/₄, SW¹/₄ NE¹/₄, SE¹/₄ NE¹/₄, NW¹/₄ SE¹/₄, SW¹/₄ SE¹/₄, NE¹/₄ SE¹/₄, SE¹/₄ SE¹/₄ of Section 3, NW¹/₄ NW¹/₄, SW¹/₄ NW¹/₄ of Section 11, T.17N., R.19E., M.D.B.&M. The existing points of diversion are described as being located within the SE¹/₄ SE¹/₄ and the SE¹/₄ SW¹/₄ of Section 3, T.17N., R.19E., M.D.B.&M.¹

II.

Application 69228 was filed on October 9, 2002, by Michael D. and Julie B. Winkel, to change the point of diversion, place of use, and manner of use of 45.7296 acre-feet, a portion of Galena Creek water previously appropriated under Permit 36216,

¹ File No. 69227, official records in the Office of the State Engineer.

Certificate 13351. The water is to be used for recreation (golf course irrigation) purposes within portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T.17N., R.19E., M.D.B.&M. The proposed points of diversion are described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T.17N., R.19E., M.D.B.&M. The existing place of use is described as being located within portions of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.17N., R.20E., M.D.B.&M. The existing point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.17N., R.20E., M.D.B.&M.²

III.

Application 69229 was filed on October 9, 2002, by Montreux Joint Venture, A Nevada General Partnership, to change the point of diversion, place of use, and manner of use of 45.7296 acre-feet, a portion of underground water previously appropriated under Permit 65508. The water is to be used for irrigation purposes within portions of the SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and all of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.17N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 7, T.17N., R.20E., M.D.B.&M. The existing place of use is described as being located within portions of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T.17N., R.19E., M.D.B.&M.; NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and portions of the SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T.17N., R.20E., M.D.B.&M. The existing point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, T.17N., R.19E., M.D.B.&M.³

IV.

Application 69230 was filed on October 9, 2002, by Michael D. and Julie B. Winkel, to change the place of use of 285.81 acre-feet, a portion of Galena Creek water previously appropriated under Permit 36216, Certificate 13351. The water is to be used as decreed within portions of the SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and all of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.17N., R.20E., M.D.B.&M. The

² File No. 69228, official records in the Office of the State Engineer.

³ File No. 69229, official records in the Office of the State Engineer.

proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 7, T.17N., R.20E., M.D.B.&M. The existing place of use is described as being located within portions of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.17N., R.20E., M.D.B.&M. The existing point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.17N., R.20E., M.D.B.&M.⁴

V.

Applications 69227, 69228, 69229, and 69230 were timely protested by the Pleasant/Steamboat Valleys Landowners Association and the Big Ditch Company alleging that the proposed change would conflict with existing rights and protectible interests in domestic wells, and would threaten to prove detrimental to the public interest. The protests state that the applications seek to transfer water with an 1858 priority that is presently used for irrigation in Pleasant Valley upstream to irrigate Montreux Golf Course in exchange for the same amount of water with a junior priority (1865) to be used in Pleasant Valley (Applications 69227 and 69228). The 1865 right would be supplemented with ground water from Pleasant Valley (Application 69229), and the existing place of use for 285.81 acre-feet would be changed to other locations in Pleasant Valley (Application 69230).

The protests allege that agricultural and golf course irrigation are distinctly different water uses with the consumptive use for golf course irrigation far exceeding traditional agriculture; thereby affecting the return flow to the stream and groundwater recharge. The protest alleges that existing diversions by Montreux Golf Course for irrigation have already impacted stream flow in lower Galena Creek, and if these applications are granted they will further impact downstream users, and if the junior priority right for use in Pleasant Valley cannot capture its full duty, the additional pumping of ground water will impact protectible interests in domestic wells. If the applications are granted, the protestants requested the State Engineer to limit the applicant to the historical consumptive use.

⁴ File No. 69230, official records in the Office of the State Engineer.

VI.

Application 69228 was also timely protested by Virginia E. Pierce on the grounds that the transfer would be detrimental to those who live in Pleasant Valley and the proposed transfer confuses “corporate greed” with actual need.

VII.

After all parties were duly noticed by certified mail,⁵ a public administrative hearing was held on January 15, 2004, regarding protested Applications 69227, 69228, 69229, and 69230 in Carson City, Nevada, before representatives of the Office of the State Engineer.

VIII.

Applications 69227, 69228, 69229, and 69230 were filed to change existing water rights within the Pleasant Valley Hydrographic Basin. The four applications involve two applicants; Michael D. and Julie B. Winkel and Montreux Joint Venture, A Nevada General Partnership (Montreux). The applications propose an exchange of surface water rights between the Montreux Golf Course property and the Winkel property, moving a supplemental groundwater right to the Winkel property, and lifting surface water rights on the Winkel property and placing the rights across the entirety of the land.^{1,2,3,4} At the hearing, Attorney Robert Sader represented Montreux.⁶ Michael D. and Julie B. Winkel were not present but authorized Montreux to provide evidence and witnesses on their behalf.⁷ The Pleasant/Steamboat Valleys Landowners Association and the Big Ditch Company protested the applications and Mr. John Rhodes represented both parties. Mr. Rhodes indicated that although he was a licensed attorney, there was no attorney/client relationship and he was present only as an agent for the protestants.⁸ Virginia E. Pierce (a.k.a. Ginger Pierce) was present and representing herself as a protestant to Application 69228.⁹

⁵ Exhibit No. 1 and Transcript, public administrative hearing before the State Engineer, January 15, 2004, (hereafter “Transcript” and “Exhibits”).

⁶ Transcript, pp. 4-5.

⁷ Exhibit No. 18.

⁸ Transcript, pp. 5-6.

⁹ Transcript, p. 6.

FINDINGS OF FACT

I.

At the public administrative hearing, in the matter of Applications 69227, 69228, 69229, and 69230, the applicants and protestants made evidentiary presentations and extensive testimony was received from experts and witnesses representing applicants or protestants. Administrative notice of the files and records in the Office of the State Engineer was taken as provided in Nevada Administrative Code 533.300.¹⁰ In addition to the applicants and protestants presenting their respective cases, the applicants were requested by the State Engineer to provide evidence and testimony regarding; the possible reduction in return flows reaching Pleasant Valley, the potential increase in groundwater withdrawals under the supplemental right, the historic use of the waters requested to be changed, the possible effects on the groundwater basin, and protectible interests in domestic wells.¹¹

In this regard, Montreux presented a report authored by Thiel Engineering Consultants to address the issues specifically raised by the State Engineer in the Hearing Notice.¹² Expert witness George Thiel¹³ from Thiel Engineering Consultants gave narrative testimony consisting of a walk through of his report to address these issues.

The first issue is the differences in irrigation practices on the properties, return flows, the historic use of the waters and the possible effects on the groundwater basin.

Mr. Thiel testified that there does appear to be some return flow from the Montreux property and the Winkel property.¹⁴ The return flow from the Montreux property is probably considerably less than that from the Winkel property due to the highly efficient irrigation system employed by the golf course versus the flood irrigation method used on the Winkel property.¹⁵ There was no observed return flow on the Montreux property during a field investigation by Mr. Thiel.¹⁶ Mr. Thiel also indicated that the water used for flood irrigation on the Winkel property runs off the property and

¹⁰ Transcript, p. 8.

¹¹ Exhibit No. 1.

¹² Exhibit No. 19.

¹³ Transcript, p. 19.

¹⁴ Transcript, pp. 56, 57, and 72.

¹⁵ Transcript, pp. 56 and 57.

¹⁶ Transcript, p. 86.

drains across the road through culverts onto an adjacent property called the Lower Sauer property.¹⁷

The Thiel Engineering report recognizes the difference between golf course irrigation and flood irrigation on the Winkel property, but takes the position that the irrigation of the golf course is simply a more efficient method of irrigation. The report goes on to state that golf course irrigation via a sprinkler irrigation system is no different than a crop using the same method. The report also notes that the State Engineer does not reduce the duty of a water right when irrigation is changed to a more efficient method. The report refers to past decisions by previous State Engineers that allowed the change of decreed water rights to be changed to golf course irrigation without a reduction in duty.¹⁸

Both the applicant and protestants agree that the Winkel property has always been irrigated by flood irrigation. The current State Engineer believes that the only water available to be changed from the Winkel property is historic consumptive water use. To allow additional water to be changed beyond the historic consumptive use would, in effect, be creating a de-facto water right above and beyond the rights delineated by decree. The State Engineer is aware that this may be a policy shift from the decisions of previous State Engineer's when decreed water rights have been changed to golf course irrigation, but this State Engineer is not bound by the policy decisions of previous State Engineer's.

The question of how much water is consumptively used during flood irrigation has been addressed by this State Engineer in State Engineer's Ruling No. 5167.¹⁹ In this ruling, the State Engineer based the consumptive use value on the *Alpine Decree*, which uses a consumptive use value of 2.5 acre-feet per acre for lands in northern Nevada.²⁰ This number was checked by determining the moisture requirement for alfalfa, in the general area of the applications, which is a common water intensive crop grown in Nevada, and confirming the maximum consumptive use of 2.5 acre-feet per acre.²¹ Due to the water intensive nature of alfalfa, the calculation using the Ames Irrigation Handbook provides a maximum value for consumptive use on the Winkel property.

¹⁷ Transcript, p. 72.

¹⁸ Exhibit No. 19, pp. 19 and 20.

¹⁹ State Engineers Ruling No. 5167, dated Oct. 24, 2002, official records in the office of the State Engineer.

²⁰ Final Decree, *U.S. v. Alpine Land and Reservoir Co.*, Civil No. D-183 (D. Nev. 1980).

²¹ Ames Irrigation Handbook, W.R. Amos Company, Table III-1, p. CR-4, 1967.

Application 69228 was filed to strip 45.7296 acre-feet of Galena Creek water, previously appropriated under Permit 36216, Certificate 13351, from the Winkel property to the Montreux Golf Course. The decreed duty of this Galena Creek water is 4.5 acre-feet per acre. To calculate the number of acres involved, one must divide the quantity of water by the associated duty. In this case, 45.7296 acre-feet divided by 4.5 acre-feet per acre equals 10.16 acres of land. The State Engineer has calculated that the historic consumptive use of the water eligible for change under Application 69228 as 25.4 acre-feet. This number was calculated by taking the consumptive duty of 2.5 acre-feet per acre times the 10.16 acres of land sought to be changed.

The State Engineer finds that the golf course irrigation is highly efficient when compared to the historic flood irrigation utilized on the Winkel property and the water used to irrigate the golf course is, for practical purposes, totally consumptive. The State Engineer finds the total quantity appropriated under the water rights requested for change from the Winkel property is not available for change; rather, the quantity of Galena Creek surface water that can be moved from the Winkel property must be limited to the historical consumptive use. The State Engineer finds that the historic consumptive use for the portion of water being changed by Application 69228 is 25.4 acre-feet per annum.

II.

One issue of concern involves return flow reaching Pleasant Valley. Return flow is generally defined as the amount of water that reaches a ground or surface water source after release from the point of use and thus becomes available for further use. In regard to irrigation, return flow can be defined as irrigation water applied to an area, which is not consumed in evaporation or transpiration and returns to a surface stream or groundwater aquifer; or water that is applied to a crop but not consumptively used, which makes it back to a waterway and is available for use by downstream users; or water, which reaches surface drainage by overland flow or through groundwater discharge as a result of applied or natural irrigation.²²

Galena Creek is regulated by the U.S. Federal Water Master's Office. The regulation of ditch diversions from Galena Creek starts when the flow drops below 6 cubic feet per second (cfs) at the USGS gauge, upstream of all diversions, at Galena Park.

²² Water Words Dictionary, Nevada Division of Water Planning, (8th ed. 1998).

At 6 cfs, the junior priority water rights are reduced on a proportional basis to ensure that all 1858 priorities are met.²³ There is no accounting for return flows to the Galena Creek system by the Federal Water Master.²⁴ Decreed owners' water rights are diverted at a rate of 1 inch per acre with no accounting of return flows. At each diversion off the system, the 1 inch per acre of applied use is set at the diversion structures. This diversion rate may be reduced when the stream goes into regulation when the flows of Galena Creek drop below 6 cfs at the gauging station as decreed and under regulation priorities.²⁵

The State Engineer finds that Galena Creek water is delivered to decree owners by the Federal Water Master independent of any return flows that may be occurring.

III.

Another issue raised by the State Engineer in the hearing notice was the potential increase in groundwater withdrawals from supplemental groundwater under Application 69229. Application 69229 was filed to change a portion of supplemental ground water previously appropriated under Permit 65508. Permit 65508 was issued, in conjunction with Permit 65507, on January 27, 2000, for commercial purposes. The terms of Permit 65508 state that the total combined duty of water under Permits 65507 and 65508 shall not exceed 336.797 acre-feet annually. The water granted under Permits 65507 and 65508 shall not be used unless water is unavailable from any other source and Permits 65507 and 65508 are totally supplemental to the waters of Browns Creek and Steamboat Creek as described under Permits 64320 and 64321.²⁶

The question of increased groundwater withdrawals comes down to a comparison of the quantity of water currently and historically pumped at the point of diversion under Permit 65508 versus the amount of water that would be pumped at the new point of diversion under change Application 69229. To the State Engineer's knowledge, supplemental water has never been pumped at the point of diversion of Permit 65508, in accordance with the terms of the permit, and the applicant provided no evidence of water usage from that well. The applicant did provide a hypothetical scenario under 1992 drought conditions using various estimates whereby the Thiel Engineering report

²³ Exhibit No. 19, p. 7.

²⁴ Transcript, p. 40.

²⁵ Exhibit No. 19, p. 7.

²⁶ File No. 65508, official records in the Office of the State Engineer.

concluded, "...the proposed change under Application 69229 would result in a net reduction of groundwater pumping than under current right, Permit 65508."²⁷

In reaching this conclusion, Thiel Engineering admitted that an accurate water supply analysis requires stream flow data. Since no such data exists, the applicant used estimates and assumptions described in Appendix D of the Thiel Engineering report as, "...streamflow estimates for Browns Creek can be derived from the gauging data at the USGS gauging station of Galena Creek at Galena State Park (USGS ID#10348850, Table 2.4 in the report). The method used is by drainage area ratio and these estimates are further adjusted by an adjusting factor derived from the average adjusting factors for matching the average annual flow with the estimates made by Arteaga and Nichols (1984) for Ophir Creek and Winters Creek in Washoe Valley due to similar runoff conditions and similar drainage areas."²⁸

The State Engineer finds that historic water usage numbers for Permit 65508 should have been used when determining the impact of change Application 69229. Also, the State Engineer finds that the lack of stream gauge data on Browns Creek and the assumptions used to estimate Browns Creek flow are insufficient to perform an accurate water supply analysis and without an accurate water supply analysis the conclusion reached in the Thiel Engineering report is unsubstantiated.

IV.

Application 69229 proposes to change a portion of Permit 65508, which changed Permit 30297, Certificate 9934. The original water right under Permit 30297, Certificate 9934 was issued with the understanding that the total duty of water shall not exceed 4.0 acre-feet per acre per annum from any and/or all sources.²⁹ Application 69229 proposes to change 45.7296 acre-feet, which when divided by the maximum duty of 4.0 acre-feet per acre per annum, equates to 11.43 acres of land. Under Item No. 7, on Application 69229, the proposed place of use describes an area of land larger than 11.43 acres. Any increase in the number of supplemental acres above 11.43 acres of land would result in an increase in water use above the allowed duty; thus, any permit issued under Application 69229 would have to be limited to the irrigation of 11.43 acres within the described place

²⁷ Exhibit No. 19, Appendix D.

²⁸ Ibid.

²⁹ File No. 30297, official records in the Office of the State Engineer.

of use. It should be noted that the surface water to which Permit 65508 is supplemental has decreed duty of 4.5 acre-feet per acre and the Galena Creek water to which Application 69229 would be supplemental, also has a decreed duty of 4.5 acre-feet per acre. As a result, if the only water applied to the land is from the supplemental ground water source, the duty on the land is 4.0 acre-feet per acre. If sufficient surface water is available, the duty on the land may be increased to 4.5 acre-feet per acre.

The State Engineer finds that any permit issued under Application 69229 must be limited to the irrigation of 11.43 acres of land at a maximum duty of 4.0 acre-feet per acre per annum.

V.

A protectible interest in domestic wells was a concern raised by the State Engineer in the hearing notice. In regards to protectible interests in domestic wells, it is the policy of the state to recognize the importance of domestic wells as appurtenances to private homes and to create a protectible interest in such wells and to protect their supply from unreasonable adverse effects, which are caused by municipal, quasi-municipal or industrial uses.³⁰ In consideration of applications, the State Engineer must take into account whether the proposed change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024.³¹ The change applications before the State Engineer are for irrigation purposes not municipal, quasi-municipal or industrial uses. Therefore, these change applications are not subject to the specific considerations set forth by statute.³²

The State Engineer finds that NRS § 533.024 is not applicable to the subject change applications.

VI.

Application 69227 moves Galena Creek water, previously appropriated under Permit 65730 from the Montreux Golf Course downstream to the Winkel Property. The priority date of this existing water right is April 1, 1865. Application 69228 moves Galena Creek water, previously appropriated under Permit 36216, Certificate 13351, from the Winkel Property to the Montreux Golf Course. The priority date of this existing

³⁰ NRS § 533.024 (2).

³¹ NRS § 533.370 (4).

³² See, NRS § 533.024, NRS § 534.110, and NRS § 533.370.

water right is 1858. The net effect of these two applications would result in water being traded between the two properties with the junior priority (1865) water right being moved downstream and the senior priority (1858) water right being moved upstream.^{1,2}

Application 69229 moves supplemental underground water, previously appropriated under Permit 65508, to the Winkel property. This application would allow the Winkels to pump ground water to supplement the surface water rights on their property.³

Application 69230 changes the place of use of Galena Creek water owned by the Winkels by picking up the existing water right and placing the water back down on the entirety of the Winkel property.⁴

An examination of Applications 69228, 69229, and 69230 show that, if approved as filed by the applicants, the permits would possibly result in the creation of additional water rights contrary to Nevada water law. Application 69228 was filed to change 45.7296 acre-feet, a portion of Galena Creek water previously appropriated under Permit 36216, Certificate 13351. The State Engineer has found in this ruling that the application must be limited to the historic consumptive duty of 2.5 acre-feet per acre or 25.4 acre-feet. Application 69229 was filed to change 45.7296 acre-feet of supplemental water to the entirety of the Winkel property. The State Engineer has found in this ruling that the application must be limited to 11.43 acres of land within the Winkel's place of use. Also, due to the nature of supplemental water rights, the supplemental water may only be used when water is unavailable from any other source, and water may be diverted only if the 1858 priorities on Galena Creek cannot be fully satisfied. Application 69230 was filed to change 285.81 acre-feet of water from Permit 36216, Certificate 13351, which is the entire water right. This is not possible since Application 69228 was also filed to change a portion of the same water right. Therefore, Application 69230 can only be approved for the remaining portion of Permit 36216, Certificate 13351, after deducting any quantity of water approved under Application 69228.

The State Engineer finds that Applications 69227, 69228, 69229, and 69230 change existing water rights within the Pleasant Valley Hydrographic Basin and therefore, approval of said applications would not result in new appropriations of water from Galena Creek or the underground aquifer and will not result in an expansion of

irrigated acreage provided necessary adjustments are made to Applications 69228, 69229, and 69230, as detailed in the preceding paragraph.

VII.

The protestants, represented by John Rhodes, indicated in their opening statement that they would like the State Engineer to deny the applications, but if the applications are approved they should be limited to the consumptive use portion of the agricultural right.³³

Mr. Rhodes was called as a witness on behalf of himself and offered narrative testimony in support of limiting the applications to the consumptive use portion of the agricultural right. The witness testified as a lay person based on personal observations and common knowledge of the area as a landowner that has irrigated in Steamboat Valley for over 50 years.³⁴ The witness testified that prior to the golf course on the Montreux property, the property was a ranch that used flood irrigation. Also, flood irrigation was inefficient and resulted in water flowing off the end of the property back into the stream channel as return flow or groundwater recharge.³⁵ The protestants offered testimony that the change to more efficient golf course irrigation on the Montreux property necessitates the reduction of Montreux's Galena Creek water rights to the consumptive use back when the property was a ranch and flood irrigation was utilized.³⁶ The protestants cited two prior permits issued by the State Engineer to bolster their case.

Under Permit 62536, the State Engineer reduced the permit to the consumptive use portion of the water, which originated in Thomas Creek, under Truckee River Claim 730.³⁷ Under Permit 67183, the State Engineer reduced the permit to the consumptive use portion of Truckee River water under Truckee River Claim 626.³⁸ The consumptive use under both permits was determined to be 2.5 acre-feet annually.

The State Engineer finds that Application 69228 proposes to move Galena Creek water, heretofore used for irrigation on the Winkel property, to golf course irrigation on the Montreux property and a reduction in duty to consumptive use is required. The State

³³ Transcript, p. 12.

³⁴ Transcript, pp. 91 and 93.

³⁵ Transcript, p. 92.

³⁶ Transcript, pp. 12-14, 92-96.

³⁷ Exhibit 22.

³⁸ Exhibit 23.

Engineer finds that the protestants request to deny all four change applications was not substantiated by their evidence or testimony.

VIII.

Virginia E. Pierce protested Application 69228 and elected to present her case in the form of narrative testimony read from Exhibit No. 27.³⁹ The last paragraph of Exhibit No. 27 reads, "Under Legislative Declaration NRS 533.024 (2), I am asking that you please protect our domestic wells." As previously indicated in this ruling, the State Engineer has found that NRS § 533.024 is not applicable to the subject change applications.

Protestant Pierce also indicated in her protest that the transfer would be detrimental to those who live in Pleasant Valley and the transfer confuses corporate greed with actual need. After considerable review and research on Application 69228, the only application protested by Mrs. Pierce, the State Engineer has found that the application can be approved with a reduction in duty to historic consumptive use without threatening to prove detrimental to the public interest. The State Engineer finds that the concerns of protestant Pierce have been adequately addressed in the findings of this ruling and the protestant did not submit evidence or testimony sufficient to merit denial of Application 69228.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴⁰

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:⁴¹

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. or conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or

³⁹ Transcript, pp. 119-120.

⁴⁰ NRS chapters 533 and 534.

⁴¹ NRS § 533.370(4).

- D. the proposed use threatens to prove detrimental to the public interest.

III.

There are no protectible interests of existing domestic wells as set forth by statute because the beneficial use is for irrigation, not municipal, quasi-municipal or industrial; and the diversion rate is less than 0.5 cfs. The State Engineer concludes Applications 69227, 69228, 69229 and 69230 will not conflict with protectible interests in existing domestic wells as set forth in NRS § 533.024, NRS § 534.110, or NRS § 533.370.

IV.

Applications 69227, 69228, 69229 and 69230 were filed to change existing surface and groundwater rights within the Pleasant Valley Hydrographic Basin. Based on the record of evidence available, the State Engineer concludes that approval of Applications 69227, 69228, 69229 and 69230, will neither conflict with existing rights nor threaten to prove detrimental to the public interest provided said applications are issued with such terms and conditions to prevent the creation of additional water rights beyond what is currently authorized.

V.

The State Engineer concludes that Application 69228 may be approved for a maximum of 25.4 acre-feet per annum; the consumptive duty of Galena Creek water historically used on the Winkel property.

VI.

The State Engineer concludes that Application 69229 would not result in increased groundwater withdrawals in the Pleasant Valley Hydrographic Basin, as any such permit issued would be limited to the irrigation of 11.43 acres of land at a maximum duty of 4.0 acre-feet per acre per annum, that water under the permit shall not be used unless water is unavailable from any other source, and water may be diverted only if the 1858 priorities on Galena Creek cannot be fully satisfied.

VII.

The State Engineer concludes that Application 69230 may be approved to change only that water remaining under Permit 36216, Certificate 13351, after the quantity of water changed under Application 69228 has been deducted.

RULING

The protests to Applications 69227, 69228, 69229 and 69230 are hereby overruled in part and upheld in part. The applications are hereby approved subject to:

1. existing rights;
2. payment of the statutory permit fees;
3. Terms and conditions including but not limited to; the limitation of Application 69228 to consumptive use; the limitation of Application 69229 to 11.43 acres within the described place of use and water under the permit shall not be used unless water is unavailable from any other source, and water may be diverted only if the 1858 priorities on Galena Creek cannot be fully satisfied; the limitation of Application 69230 to change only that water remaining under Permit 36216, Certificate 13351, after the quantity of water changed under Application 69228 has been deducted.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 3rd day of

June, 2004.