

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

IN THE MATTER OF APPLICATION 45185 )  
FILED TO CHANGE THE POINT OF )  
DIVERSION AND PLACE OF USE OF A )  
PORTION OF THE PUBLIC WATERS OF A )  
SURFACE SOURCE PREVIOUSLY )  
APPROPRIATED UNDER PERMIT 41666 )  
WITHIN THE TRUCKEE MEADOWS )  
HYDROGRAPHIC BASIN (87), WASHOE )  
COUNTY, NEVADA. )

**RULING**

**#5653**

**GENERAL**

**I.**

Application 45185 was filed on January 8, 1982, by George I. Benny to change the point of diversion and place of use of 0.42 cubic feet per second (cfs) of Truckee River water previously appropriated under Permit 41666. An unknown portion of Application 45185 was later assigned to T.M. Chang on June 8, 1979. The proposed and existing manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within portions of the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$ , NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 13 and the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 14, T.19N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 13.<sup>1</sup>

**II.**

Permit 41666 was issued on July 22, 1981, to George I. Benny for 8.303 cfs of water from Steamboat Creek for quasi-municipal purposes. Permit 41666 has undergone a series of ownership changes and an abrogation. The current owner of record of the remaining portion of Permit 41666 is Washoe County. The existing place of use is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$ , S $\frac{1}{2}$  of Section 4, E $\frac{1}{2}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 5, NE $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  SW $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 8, all of Section 9, N $\frac{1}{2}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$ , NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 16, NW $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$

<sup>1</sup> File No. 45185, official records in the Office of the State Engineer.

SE¼, SW¼ SE¼, NW¼ SE¼ of Section 17, NW¼ SW¼ of Section 33, T.19N., R.20E., M.D.B.&M. and the NE¼ SW¼, SE¼ SW¼, SW¼ SW¼ of Section 33, T.19N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within SW¼ SE¼ of Section 16, T.18N., R.20E., M.D.B.&M.<sup>2</sup>

### **FINDINGS OF FACT**

#### **I.**

The applicants and agents were notified by certified mail dated July 7, 2004, to submit additional information to the Office of the State Engineer to correct the title deficiencies of Application 45185. The applicants were warned that failure to respond within 60 days would result in denial of the application. Properly endorsed certified mail receipts were received in the Office of the State Engineer from T.M. Chang and both agents. The certified letter to George I. Benny was returned by the U.S. Postal Service marked unclaimed. This letter was resent by regular mail and was also returned by the U.S. Postal Service marked "not at this address."<sup>1</sup> To date, the applicants and agents have expressed no interest in pursuing this application and have not submitted the additional information requested.

The State Engineer finds that the applicants and agents were properly notified of the request for additional information and failed to respond.

#### **II.**

Records in the Office of the State Engineer show that Permit 41666, which forms the basis for change Application 45185, has undergone a series of ownership changes over the years. Ownership of the relevant portion of Permit 41666 is currently shown in the name of Washoe County. Application 45185 is in the ownership of George I. Benny and T. M. Chang. The State Engineer cannot consider a change application for approval unless the owner(s) of the change application can demonstrate full title to the portion of the water right being changed.

The State Engineer finds that the applicants have failed to show proof of ownership of the pertinent portion of Permit 41666, which forms the basis for change Application 45185.

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<sup>2</sup> File No. 41666, official records in the Office of the State Engineer.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</sup>

### II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.<sup>4</sup>

### III.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>5</sup>

- 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.

### IV.

The applicants and agents were properly notified of the requirement for additional information and have failed to submit the information to the State Engineer's office. The State Engineer concludes that the failure to respond to the certified letters and failure to submit additional information to correct title deficiencies, demonstrates the applicants' lack of interest in pursuing Application 45185. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

### V.

The State Engineer concludes that to grant a permit under change Application 45185 when the applicants do not own any portion of the water right under Permit 41666, which forms the basis for the change application, would threaten to prove detrimental to the public interest.

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<sup>3</sup> NRS chapters 533.

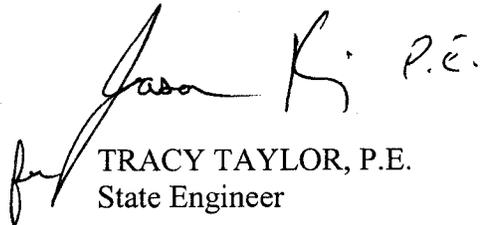
<sup>4</sup> NRS § 533.375.

<sup>5</sup> NRS § 533.370(5).

**RULING**

Application 45185 is hereby denied on the grounds its issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,

  
TRACY TAYLOR, P.E.  
State Engineer

TT/TW/jm

Dated this 30th day of

August, 2006.