

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

IN THE MATTER OF APPLICATIONS )  
47726 and 47727 FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF )  
SLOUGH CREEK WITHIN THE DIAMOND )  
VALLEY HYDROGRAPHIC BASIN (153), )  
EUREKA COUNTY, NEVADA. )

RULING

**#5878**

GENERAL

I.

Application 47726 was filed on February 24, 1984, by Jerry Lee Anderson to appropriate 3.0 cubic feet per second (cfs) of water from Slough Creek (Intermittent) within the Diamond Valley Hydrographic Basin, Eureka County, Nevada. The proposed manner and place of use is for irrigation purposes of 320 acres of land, located within the W½ of Section 17, T.20N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 1 of said Section 17.<sup>1</sup>

II.

Application 47727 was filed on February 24, 1984, by Jerry Lee Anderson to appropriate 3.0 cfs of water from Slough Creek (Intermittent) within the Diamond Valley Hydrographic Basin, Eureka County, Nevada. The proposed manner and place of use is for irrigation purposes of 320 acres of land, located within the W½ of Section 17, T.20N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 10 of Section 18, T. 20N., R.53E., M.D.B.&M.<sup>2</sup>

III.

Applications 47726 and 47727 were timely protested by Roy R. Risi on the following grounds:<sup>1,2</sup>

Water is being applied to irrigate 1000 to 2000 acres upstream and has been used thus since before 1905 (1892).

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<sup>1</sup> File No. 47726, official records in the Office of the State Engineer.

<sup>2</sup> File No. 47727, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

For every application filed to appropriate water, an analysis must be performed to determine if the applications meet the statutory requirements for approval. Two such requirements are whether there is water available for appropriation at the proposed source and whether the proposed use will conflict with existing rights. The protests indicate that there are senior water rights on the water source and by implication, there is no water available for appropriation and the applications will conflict with existing rights.

Additional detail regarding the nature of the applications can be found in the remarks section. This information indicates that Applications 47726 and 47727 were filed to appropriate water from Slough Creek, but limited to intermittent flood waters that occur during spring run-off. It is stated that these waters have caused considerable flooding of the Applicant's irrigated lands and the intent of the Applicant is to control and use these waters to supplement the Applicant's ground-water rights.<sup>1,2</sup>

A review of records on file in the Office of the State Engineer revealed two existing water rights on the source owned by the Protestant. These existing water rights consist of two claims of vested right, V-04511 and V-04513. Vested claim V-04511 describes the manner and place of use as stockwatering of 250 cattle located within the NW¼ SE¼ of Section 22, T.20N., R.52E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of said Section 22. Vested claim V-04513 describes the manner and place of use as irrigation of 1,109.06 acres located within Section 13, T.20N., R.51E., Sections 17, 18, 19, 20 and 21 T.20N., R.52E., M.D.B.&M. The point of diversion is described as being located within the NE¼ SW¼ of Section 13, T.20N., R.51E., M.D.B.&M.<sup>3</sup>

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<sup>3</sup> File Nos. V04511 and V04513, official records in the Office of the State Engineer.

The location of the vested claims on the stream system is significant. The vested claims have senior priority and are entitled to be fully satisfied prior to any other rights on the stream system. By plotting the location of the vested claims on a topographic map, it is clear that the Protestant's existing vested rights are far upstream of the Applicant's lands and the proposed points of diversion under Applications 47726 and 47727. A review of the records on file at the Office of the State Engineer show no additional rights on Slough Creek downstream of Applications 47726 and 47727.<sup>4</sup>

The State Engineer finds that the Protestant's senior vested claims are located upstream and only that water in excess of the vested claims, flowing downstream to the Applicant's property, is available for appropriation. The State Engineer finds the water applied for under Applications 47726 and 47727, is intermittent spring runoff and/or flood water, which would not affect any existing upstream water rights. The State Engineer further finds that there are no water rights on the source downstream of the Applicant's property.

#### CONCLUSIONS

##### I.

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

##### II.

The State Engineer is prohibited by law from granting a permit 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;

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<sup>4</sup> Nevada Division of Water Resources' Water Rights Database, Hydrographic Abstract of Slough Creek, June 14, 2007, official records in the Office of the State Engineer.

<sup>5</sup> NRS § 533.370(5).

- 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.**

The only existing water rights on file for Slough Creek are vested claims V-04511 and V-04513 as well as protested Applications 47726 and 47727. The vested claims were found to be upstream of the applications. The State Engineer concludes that the proposed use of the spring runoff and/or flood water of Slough Creek, downstream of the Protestant, will not conflict with existing rights and as such the protests may be overruled.

**IV.**

The State Engineer concludes that the proposed use will not conflict with protectible interests in existing domestic wells.

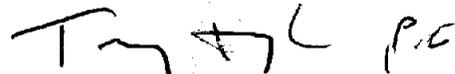
**V.**

The State Engineer concludes that the proposed use will not threaten to prove detrimental to the public interest.

**RULING**

The protests are hereby overruled and Applications 47726 and 47727 are approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/KMH/jm

Dated this 8th day of  
August, 2008.