

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

IN THE MATTER OF APPLICATIONS)
50008, 51237, AND 51608 FILED TO)
CHANGE THE PLACE OF USE OF)
WATERS OF THE TRUCKEE AND)
CARSON RIVERS, WITHIN THE)
CARSON DESERT HYDROGRAPHIC)
BASIN (101), CHURCHILL COUNTY,)
NEVADA.

RULING

5919

GENERAL

I.

The State Engineer will be brief in setting out the background regarding these applications, since earlier rulings extensively set forth the proceedings and decisions regarding them. Applications 50008, 51237 and 51608 were filed in 1986 and 1987 to change the place of use of waters of the Carson and Truckee Rivers decreed for use within the Newlands Reclamation Project. The applications were protested by the Pyramid Lake Paiute Tribe of Indians. The State Engineer conducted multiple hearings and has issued multiple rulings on these applications. The State Engineer's decisions have been repeatedly appealed to the Federal District Court, and the District Court's decisions have been repeatedly appealed to the Ninth Circuit Court of Appeals.

FINDINGS OF FACT

I.

The most recent decision from the Ninth Circuit Court of Appeals was issued on December 7, 2007. In its decision, the Ninth Circuit reversed a portion of the State Engineer's decision in State Engineer's Ruling No. 5464. As to Application 50008, the Ninth Circuit Court of Appeals reversed the State Engineer's decision as to the forfeiture of the water rights appurtenant to Parcel 2, reversed the State Engineer's decision as to the forfeiture of portions of the water rights appurtenant to Parcels 8 and 9 and remanded as to the forfeiture of portions of the water rights appurtenant to Parcels 11 and 12. As to Application 51237, the Ninth Circuit Court of Appeals reversed the State Engineer's decision as to the forfeiture of the water rights appurtenant to the land occupied by a drain

ditch, and as to Application 51608 reversed the State Engineer's decision as to the forfeiture of the water rights appurtenant to Parcels 1 and 9.

By Order dated November 20, 2008, the Federal District Court remanded Applications 50008, 51237 and 51608 to the Nevada State Engineer for further proceedings consistent with the Ninth Circuit's Opinion.

II.

Application 50008 (Rambling River Ranches).

The State Engineer finds pursuant to the decision of the Ninth Circuit Court of Appeals that the water right appurtenant to Parcel 2 is forfeited.

As to Parcels 8 and 9, the State Engineer found in State Engineer's Ruling No. 5464-B that the evidence provided during the administrative hearings was not sufficient to quantify the exact acreage covered by the 1947 contract, but that it was less than 1.0 acre of Parcel 8 that was subject to a claim of forfeiture and it was less than the 1.35 acres requested for transfer under Parcel 9 that was subject to a claim of forfeiture. The Ninth Circuit reversed the State Engineer's decision and held the water rights on those parcels were forfeited.

By letter dated July 3, 2008, Rambling River Ranches withdrew "any portion of Parcels 8 and 9 that remains undetermined as to forfeiture." The State Engineer believes the Applicant is requesting the State Engineer to withdraw from Application 50008 the existing place of use where the Ninth Circuit has determined the water rights are forfeited on Parcels 8 and 9. What was missing in the evidentiary presentations was a map identifying and quantifying the area covered by the 1947 contract; in other words, a map of the lands with forfeited water rights. Using the maps in the Office of the State Engineer and AutoCAD, the State Engineer finds the portions of Parcels 8 and 9 with forfeited water rights are 1.10 acres in Parcel 8 and 1.26 acres in Parcel 9 and those portions of these parcels have been withdrawn by the Applicant. With the Ninth Circuit's determination that those water rights are forfeited and the Applicant's withdrawal of these portions from the application, there is nothing for the State Engineer to rule on regarding forfeiture as to the water rights appurtenant to those portions of Parcels 8 and 9.

Rambling River Ranches also decided, that rather than proceeding with the time and expense of further development of the record, to withdraw the portions of Parcels 11 and 12 that were remanded for further development of the record, that being, 0.5 of an acre in Parcel 11 and 0.3 of an acre in Parcel 12. The State Engineer had found in State Engineer's Ruling No. 4798, that only 0.3 of an acre of Parcel 12 was subject to the claim of forfeiture.¹ With the Applicant's withdrawal of these portions of the application, there is nothing for the State Engineer to rule on regarding forfeiture as to Parcels 11 or 12.

The State Engineer finds that Rambling River Ranches must file an amended Proof of Beneficial Use and a designation map showing the location of the proposed irrigated lands supporting the final total acreage permitted for transfer under Application 50008 before the State Engineer can proceed with certification of the water right.

III.

Application 51237 (Howard and Barbara Wolf)

As to Application 51237 (Howard and Barbara Wolf), the Ninth Circuit reversed the State Engineer's decision regarding a drain ditch occupying 1.0 acre in the middle of the existing place of use. The Federal District Court remanded Application 51237 to the State Engineer for further proceedings consistent with the Ninth Circuit's Opinion. The State Engineer finds pursuant to the decision of the Ninth Circuit Court of Appeals that the water right appurtenant to the 1.0 acre is forfeited. However, the State Engineer has no map identifying the location of that acreage. The State Engineer finds the Protestant Pyramid Lake Paiute Tribe of Indians must file a map indicating the location of the drain ditch and serve a copy of that map on the Applicant. The State Engineer finds the Wolfs must file an amended Proof of Beneficial Use and a designation map showing the location of the proposed irrigated lands supporting the final total acreage permitted for transfer under Application 51237 before the State Engineer can proceed with certification of the water right.

IV.

Application 51608 (Ted and Lois de Braga)

As to Application 51608 (Ted and Lois de Braga, now owned by Lester and

¹ State Engineer's Ruling No. 4798 at 225, official records in the Office of the State Engineer.

Angela de Braga), the Ninth Circuit held as to Parcels 1 and 9 that they had been put to uses inconsistent with irrigation in 1948 and no thwarted attempt to transfer was made for a 25-year period; therefore, the Ninth Circuit reversed the State Engineer's decision and found the water rights forfeited. The Federal District Court remanded Application 51608 to the State Engineer for further proceedings consistent with the Ninth Circuit's Opinion. The State Engineer finds that pursuant to the decision of the Ninth Circuit Court of Appeals that the water rights appurtenant to the 1.8 acres in Parcel 1 and the 2.35 acres in Parcel 9 are forfeited. The State Engineer finds the de Bragas must file an amended Proof of Beneficial Use and a designation map showing the location of the proposed irrigated lands supporting the final total acreage permitted for transfer under Application 51608 before the State Engineer can proceed with certification of the water right.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

RULING

For Application 50008: the water rights appurtenant to 1.10 acres in Parcel 8 and 1.26 acres in Parcel 9 are forfeited. The Applicant withdrew from consideration any remaining acreage subject to the remand; therefore, there is nothing remaining for the State Engineer to rule on regarding forfeiture. Applicant Rambling River Ranches must file an amended Proof of Beneficial Use and a designation map showing the location of the proposed irrigated lands supporting the final total acreage permitted for transfer under Application 50008 before the State Engineer can proceed with certification of the water right.

For Application 51237: the Ninth Circuit Court of Appeals held the water right appurtenant to 1.0 acre occupied by a drain ditch is forfeited. Applicant Howard and Barbara Wolf must file an amended Proof of Beneficial Use and a designation map showing the location of the proposed irrigated lands supporting the final total acreage permitted for transfer under Application 51237 before the State Engineer can proceed with

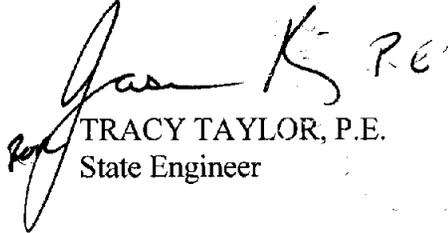
² NRS chapter 533.

certification of the water right. Protestant Pyramid Lake Paiute Tribe of Indians must file a map indicating the location of the drain ditch under Application 51237.

For Application 51608: the Ninth Circuit Court of Appeals held the water rights appurtenant to Parcels 1 and 9 are forfeited. Applicant Lester and Angela de Braga must file an amended Proof of Beneficial Use and a designation map showing the location of the proposed irrigated lands supporting the final total acreage permitted for transfer under Application 51608 before the State Engineer can proceed with certification of the water right.

All maps are required to be filed in the Office of the State Engineer within 45 days of the date of this ruling.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/SJT/jm

Dated this 12th day of

December, 2008.