

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

IN THE MATTER OF APPLICATION)
78914 FILED TO CHANGE THE PLACE)
OF USE OF THE PUBLIC WATERS OF)
THE WALKER RIVER HERETOFORE)
APPROPRIATED UNDER PERMIT 68402)
WITHIN THE MASON VALLEY)
HYDROGRAPHIC BASIN (108), LYON)
COUNTY, NEVADA.)

RULING

#6050

GENERAL

I.

Application 78914 was filed on September 23, 2009, by Borsini Ranch, Inc., to change the place of use of 1.92 cubic foot per second (cfs) of the waters of the Walker River heretofore permitted for appropriation under Permit 68402. The period and manner of use is as decreed. The proposed place of use is described as being located within the S½ of the SE¼ of Section 9, NE¼, NE¼ NW¼, and NW¼ SE¼ of Section 16, T.12N., R.25E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 16, T.12N., R.25E., M.D.B.&M.¹ The remarks section of the application indicates the purpose of the application is to correct the place of use of Permit 68402, which changed the point of diversion of a Walker River decreed water right. It is further indicated that the proposed place of use has been irrigated for several seasons.

II.

Application 78914 was timely protested by the Walker Lake Working Group and Mineral County on grounds as summarized below:¹

1. The State Engineer is urged to evaluate the new place of use's effect on the Walker River to ensure that it will not have, and is not having, a detrimental effect on downstream water rights or Walker Lake.
2. The application should be denied as the proposed transfer is contrary to the public interest because the predominant source of water for Walker Lake is inflow of

¹ File No. 78914, official records in the Office of the State Engineer.

surface water and underground water from the Walker River and the hydrologically connected groundwater system in the Walker River and Lake Basin, and that dropping water levels and increasing water quality problems jeopardizes the fishery and wildlife dependent on that fishery.

3. The State Engineer has designated four of the basins within the Walker River Basin and over-pumping of Smith and Mason Valleys have caused significant drops in groundwater levels thereby removing water from the Walker River to replenish groundwater drawdown resulting in less water flowing into Walker Lake affecting water quality and harm to the ecological health of the lake and devastating the economic base and quality of life in Mineral County.
4. The State Engineer and the State of Nevada have a public trust duty to ensure adequate levels of water in Walker Lake to protect its economic and ecological viability as it asserted in the claim currently pending before the Federal District Court for the District of Nevada; thus, it would be premature for the State Engineer to approve this application.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that in the case of protested Application 78914 there is sufficient information contained within the records of the Division of Water Resources (Division) to gain a full understanding of the issues and a hearing on this matter is not required.

II.

The State Engineer finds that the issues of water allocation in the decree and effects on the downstream water rights or Walker Lake are being addressed in the Federal District Court pursuant to Protestant Mineral County's Motion to Intervene and Complaint in Intervention in the Walker River Decree case. The State Engineer finds the change application process is not the proper forum for challenging the use of the water at all. That issue is for the decree court.

III.

The central issue raised by the Protestants is the assertion that the decreed surface water, permitted and certificated groundwater rights in this and the related hydrographic basin are in hydrologic connection with the Walker River and the use of water under those surface and groundwater rights is removing water from the Walker River thereby resulting in harm to the ecological health of Walker Lake. Therefore, they alleged that any use of the water proposed by the application threatens to prove detrimental to the public interest.

Nevada Revised Statute § 533.030 provides that subject to existing rights, all water is subject to appropriation for beneficial use. Application 78914 is a change of Permit 68402, which was a change of Walker River decreed Claim Number 125 from the West Walker River. The decreed water is 0.40 cfs for 25 acres of irrigation with an 1869 priority and 1.52 cfs for 95 acres of irrigation with a 1905 priority. The State Engineer finds the change application process is not the place to attempt to regulate surface or groundwater in a groundwater basin by elimination of existing water rights. The State Engineer finds this change application has no greater impact on the resource, if any, than that approved when the right was decreed.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where: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 protectable 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.

² NRS Chapter 533.

³ NRS § 533.370(5).

III.

This application proposes to change the existing place of use to a better defined area closer to the Walker River and the State Engineer concludes that use of water as proposed by this change will not conflict with existing rights or threaten to prove detrimental to the public interest.

RULING

The protests to Application 78914 are hereby overruled and the application is granted subject to existing rights and the payment of the statutory permit fees.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 15th day of
July, 2010.