

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

IN THE MATTER OF APPLICATION )  
79102 FILED TO CHANGE THE POINT )  
OF DIVERSION OF A PORTION OF THE )  
PUBLIC WATERS OF THE ORR DITCH )  
DECREE CLAIM NOS. 692 AND 696, )  
WITHIN THE PLEASANT VALLEY )  
HYDROGRAPHIC BASIN (88), WASHOE )  
COUNTY, NEVADA. )

**RULING**  
**#6126**

**GENERAL**

**I.**

Application 79102 was filed on December 23, 2009, by Mike and Beth Schuler to change the point of diversion of a portion of water under the Orr Ditch Decree, specifically a portion of Claim Nos. 692 and 696, being 107.98 acre-feet per season and a pro-rata share of the diversion rate of water from Steamboat Creek or Galena Creek for purposes as decreed on 23.98 acres of land described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, T.17N., R.20E., M.D.B.&M., being further described as Washoe County Assessor's Parcel Nos. 17-320-05 and 17-390-10. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 5, T.17N., R.20E., M.D.B.&M., formally known as the Big Ditch.<sup>1</sup> The existing point of diversion is located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 4, T.17N., R.20E., M.D.B.&M.

**II.**

Application 79102 was timely protested by the Big Ditch Company on the following grounds:<sup>1</sup>

1) Effect on Delivery Schedule.

If the Application is granted, and if the Company were to consent to the delivery of Meadow Ditch water through the Big Ditch, which it currently opposes, the end result would be detrimental to and conflict with the existing rights of all Big Ditch members because they would be required to significantly reduce their respective water delivery times in order to accommodate delivery of the additional Meadow Ditch water. To allow such a result could well constitute a breach of duty by the Big Ditch Trustees and subject them to litigation by their own members. Granting the Application will place the Trustees in an untenable "no win" situation, as did Ruling #6017, discussed below.

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<sup>1</sup> File No. 79102, official records in the Office of the State Engineer.

Application 76111, which was protested by the Company, and Application 76112 were granted by Ruling #6017 entered November 12, 2009. In opposition to those Applications, the Company argued that approval of the Applications would set an ill-advised precedent and open the gate to a slippery slope by inviting and encouraging other holders of Meadow Ditch water rights, who are not now receiving their decreed rights, to file identical applications to change their points of diversion to the Big Ditch. The Application in issue provides solid proof of the validity of that argument.

The Applicant is not in a unique position. All other owners of Meadow Ditch rights appurtenant to property downstream from the Water Ski Lake are similarly situated. The granting of this Application will undoubtedly result in more new applications, to the benefit of early applicants and to the detriment of less timely applicants. If the State Engineer continues to grant these applications, the Big Ditch will soon be overwhelmed by Meadow Ditch water, with a corresponding additional detriment and loss of delivery time to its own members, and eventual lack of capacity. The Big Ditch was not designed or intended to carry a full duty of both Big Ditch and Meadow Ditch water. Reconstructing the Big Ditch to do so is both physically and financially impracticable, if not impossible. A much more equitable and practical solution is for all Meadow Ditch water rights owners to work toward reopening the Meadow Ditch for its intended purpose.

2) Unavailability of Additional Flows.

The proposition that moving Meadow Ditch rights to the Big Ditch will result in additional late season flows is illusory. The projected result seems sound in theory, but it fails in practice. The 2009 irrigation season is an excellent example. When Big Ditch diversions were placed in regulated status by the Water Master, and only stock water was available, it was not physically possible to augment Big Ditch diversions with Meadow Ditch diversions because there was insufficient flow in Steamboat Creek to satisfy either priority.

Over the last ten years, the vast majority of water rights superior in priority to both Big Ditch and Meadow Ditch rights have been transferred to a place of use at Montreaux Golf Course, where modern scientific irrigation practices result in virtually zero return flow to Galena Creek. That fact, together with the existing inability to access any significant storage rights in Little Washoe Lake, has resulted in a situation where, in regulated status, available flows in Steamboat Creek simply do not exist for either Big Ditch or Meadow Ditch water rights.

3) Unintended Consequences.

Granting the Application will again pit the Applicant against the Company, as did Ruling #6017, and may promote expensive litigation. The Company does not dispute that both the Application and the Ruling are well intentioned. However, their implementation can have no other result than to conflict with and adversely impact, to a very real extent and not just in theory, the existing rights of all Big Ditch members to delivery of their decreed rights.

## **FINDINGS OF FACT**

### **I.**

Nevada Revised Statute § 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 sufficient information is available in the Office of the State Engineer and an administrative hearing to obtain additional evidence is not necessary.

### **II.**

The findings of fact stated below are based on a field investigation performed by personnel from the Office of the State Engineer on April 16, 2009, with a return site visit done on April 21, 2010.<sup>2</sup>

Flow at the Big Ditch diversion from Steamboat Creek was measured at 8.0 cubic feet per second (cfs) and was measured above the Neilson Road crossing at 8.35 cfs. The next Big Ditch measurement was at the intersection of Andrew and Paddlewheel Lanes at 6.1 cfs. A lateral diversion from Big Ditch was taking 1.0 cfs from Big Ditch at Neilson Road and a small amount of water was leaking past a second lateral gate that places water in a ditch that runs parallel to and on the north side of Big Ditch until Big Ditch crosses Andrew Lane from northwest to southeast. Access is difficult along this section of the ditch and the difference between 8.35 cfs at Neilson Road and 6.1 cfs at the Andrew/Paddlewheel intersection may be explained through ditch loss and other potential diversions over this section of ditch.

A loss of 3.2 cfs is noted between the Andrew/Paddlewheel intersection and the point at which Big Ditch crosses beneath Rhodes Road within the confines of the SE $\frac{1}{4}$  SE $\frac{1}{4}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 4, T.17N., R.20E., M.D.B.&M. Water loss throughout the 0.7 mile part of the ditch that passes through parcels located between the intersection of Andrew/Paddlewheel Lanes and the ditch crossing at Rhodes Road is attributable to irrigation diversions and ditch seepage.

The inlet of the Big Ditch begins at contour elevation of 4,668 feet and terminates at the three-way diversion located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 3, T.17N., R.20E., M.D.B.&M., at an elevation of 4,666 feet as derived from the 2 foot contours available from the Washoe County Assessor's website. These elevations are less than precise, but they do illustrate the

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<sup>2</sup> Report of Field Investigation Nos. 1114 and 1114A, April 16, 2009, and April 21, 2010, official records in the Office of the State Engineer.

relatively flat gradient of Big Ditch. The total length of the ditch from the diversion from Steamboat Creek to the aforementioned terminus in Section 3 is 2.0 miles, measured using Google Earth.

The lateral diversion on the north side of the intersection of Paddlewheel and Andrew Lanes is a low spot that probably would limit the flow in the ditch. The ditch was passing 8.35 cfs at this point during the measurements and there was still sufficient freeboard for additional flow in the ditch. Some of the structural problems at the headgates and associated lateral diversions can be attributed to lack of maintenance, causing leakage around the lateral gates.

Velocities from the flow measurements ranged from 0.97 feet/second (below Steamboat diversion), 0.89 feet/second (Neilson Road), 0.83 feet/second (Andrew/Paddlewheel), 0.33 feet/second (below Rhodes Road crossing, large backwater effect), 0.82 feet/second (center ditch below terminus), 0.44 feet/second (north of siphon on east diversion). These velocities are subject to varying degrees of backwater affect from headgates and culvert constrictions with the exception of the center ditch below the terminus of Big Ditch. It is concluded that velocities would only be pertinent if all head gates were open allowing free flow within the ditch.

Water levels in the ditch below the siphon from the easterly lateral at the terminus of Big Ditch showed evidence of water levels approximately 8 inches to 1 foot deeper than at the time of the measurements. In fact all of the lower sections of Big Ditch exhibited the ability to carry larger volumes of water than were measured. Only the upper parts of the ditch appeared to be at or near normal capacity with 8 cfs or slightly more in the channel.

Water delivery information obtained from the Federal Water Master's office indicates that water deliveries to the Big Ditch were as high as 10 cfs in the middle of May 2006, and were up to 11 cfs in the middle of May 1996. The Water Master's office indicated that when there is sufficient flow in Steamboat Creek no regulation of flow occurs at the Big Ditch diversion. When insufficient flow is available to serve 1865 and later priorities, only stock water is available for the remainder of the irrigation season.

The water under Meadow Ditch water right Claim Nos. 696, 696½ and 697 have corresponding priority dates of March 1, 1862; March 1, 1863; and April 1, 1865, respectively. Big Ditch priorities are primarily in 1865 and 1866. It would appear to be beneficial to move earlier priority rights into the ditch, so irrigation water could be diverted into the Big Ditch later in the irrigation season as stream flow recedes in Steamboat Creek, especially during drought years.

The State Engineer finds that there is sufficient capacity in Big Ditch to move additional water into said ditch to serve the parcels under Application No. 79102. The State Engineer finds that the evidence from the field investigation reflected that water from Meadow Ditch rights are currently being delivered via the Big Ditch allowing a larger head to be diverted from Steamboat Creek thus allowing additional water to reach end users currently on the Big Ditch system.

**III.**

The State Engineer finds that it is the responsibility of the water right holder to secure such easements and construction works as necessary to file the requisite proof of completion under any water right issued and operational disputes between the Big Ditch Company and its members is not within the State Engineer's jurisdiction. The State Engineer further finds that it is not within his jurisdiction to determine how a ditch company will operate or how it will deliver the water.

**CONCLUSIONS**

**I.**

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

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where.<sup>4</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 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.

**III.**

The State Engineer concludes that there is sufficient capacity in the Big Ditch to carry the additional diversion from Application 79102, but cannot compel the Big Ditch Company to divert and deliver such water or to make improvements to the ditch structure system.

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

<sup>4</sup> NRS § 533.370(5).

IV.

The State Engineer concludes that it is the responsibility of the water right holder to secure such easements and construct such works as necessary to file the requisite proof of completion under any water right issued and that issues regarding compliance with Big Ditch Company bylaws are not within the State Engineer's jurisdiction.

**RULING**

The protest to Application 79102 is hereby overruled and Application 79102 is approved subject to:

1. payment of the statutory fees;
2. existing rights; and
3. continuing jurisdiction and regulation by the Federal Water Master.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 15th day of  
June, 2011.