

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

IN THE MATTER OF APPLICATIONS)
47786, 48476, 79645 AND 79646 FILED TO)
APPROPRIATE DRAIN WATERS WITHIN)
THE CARSON DESERT HYDROGRAPHIC)
BASIN (101), CHURCHILL COUNTY,)
NEVADA.)

RULING

#6226

GENERAL

I.

Application 47786 was filed on March 13, 1984, by Stillwater Farms, Inc. to appropriate 25.0 cubic feet per second (cfs) of drain water for wildlife purposes within Sections 15, 16, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, E $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, Sections 20 and 21, W $\frac{1}{2}$ of Section 22, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ of Section 28, Section 29, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$ of Section 30, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 31, N $\frac{1}{2}$ of Section 32, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, all in T.20N., R.31E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T.19N., R.31E., M.D.B.&M. Item 12, the remarks section of the application, indicates that the application is for drain water, which comes from Stillwater Slough and drain water from irrigation ditches in the Newlands Project.¹

II.

Application 48476 was filed on October 8, 1984, by Stillwater Farms, Inc. to appropriate 35.0 cfs of "Stillwater Slough Drain Water" for wildlife purposes within the same place of use as identified under Application 47786. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T.20N., R.31E., M.D.B.&M. Item 12, the remarks section of the application, indicates that the application is for drain water, which comes from Stillwater Slough and drain water from irrigation ditches in the Newlands Project.²

III.

Applications 47786 and 48476 were timely protested by the Truckee Carson Irrigation District (TCID) on the following grounds:^{1,2}

¹ File No. 47786, official records in the Office of the State Engineer.

² File No. 48476, official records in the Office of the State Engineer.

1. The waters of the Carson and Truckee Rivers, suppliers of Lahontan reservoir storage, are totally appropriated.
2. The waters herein sought to be appropriated (47786)³ have been appropriated for use for beneficial purposes within the Newlands Project.
3. The waters herein sought to be appropriated are necessary for the uses of the Newlands Irrigation Project for the irrigation of lands within the Project.
4. The Truckee Carson Irrigation District has heretofore made application for permits to appropriate the waters herein before referred (47786), which are still pending before the State Engineer's office.

IV.

Applications 47786 and 48476 were timely protested by Candis Kyle Peck and Kathy Mort on the following grounds:^{1,2}

We the Weishaupt Family Trust are under the Freeman Contract, dated August 18, 1919, between John W. Freeman Company and the United States of America, which is [sic] under Section 6 states delivering of water to said ranch will be at two points designated by said landowner. The application [sic] has no easement across protestants' property for delivery of water to applicant's property. The Stillwater Slough is a drain to be designated as a canal now through our ranch will adversely affect our bridges and erode the banks depleting our land. The application, if granted, will adversely affect protestants [sic] vested water rights.

V.

Application 47786 was timely protested by the United States Fish and Wildlife Service (USFWS) on the following grounds:¹

1. The applicant does not have legal access to the point of diversion.
2. This application is for drain water from the Stillwater Slough and drain water from irrigation ditches within the Newlands Reclamation Project. This water is already fully appropriated to the United States, is under the control of the Secretary of the Interior for the benefit of the Newlands Reclamation Project and is not available for further appropriation under state law.
3. Water within a Federal Reclamation Project is not subject to further appropriation under Federal law. The water within the Newlands Reclamation Project is not subject to appropriation.
4. Under current project operations, there is no water of any type available at the point of diversion. Operational spills, irrigation waste water, excess water and drain water are being diverted through an existing water control structure to wetlands at Stillwater National Wildlife Refuge, not to Stillwater Slough.
5. This application is inconsistent with Nevada law for the appropriation of irrigation waste water, excess water and drain water.

³ The State Engineer notes that the Protestant incorrectly identified Application 47786 in its protest to Application 48476.

VI.

Application 48476 was timely protested by the United States Fish and Wildlife Service on the following grounds:²

1. This application is for drain water from the Stillwater Slough and drain water from irrigation ditches within the Newlands Reclamation Project. This water is already fully appropriated to the United States, is under the control of the Secretary of the Interior for the benefit of the Newlands Reclamation Project and is not available for further appropriation under state law.
2. Water within a Federal Reclamation Project is not subject to further appropriation under Federal law. This water within the Newlands Reclamation Project is not subject to appropriation, nor is there sufficient water available for appropriation at this point of diversion to support the application.
3. This application is inconsistent with Nevada law for the appropriation of irrigation waste water, excess water and drain water.

VII.

Application 79645 was filed on February 24, 2010, by Stillwater Farms, Inc. to appropriate 35.0 cfs of Stillwater Slough drain water for wildlife purposes within the same place of use as identified under Application 47786. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T.20N., R.31E., M.D.B.&M. Item 12, the remarks section of the application, indicates that the application is for drain water, which comes from Stillwater Slough and drain water from irrigation ditches in the Newlands Project.⁴

VIII.

Application 79646 was filed on February 24, 2010, by Stillwater Farms, Inc. to appropriate 25.0 cfs of drain water for wildlife purposes within the same place of use as identified under Application 47786. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T.19N., R.31E., M.D.B.&M. Item 12, the remarks section of the application, indicates that the application is for drain water, which comes from Stillwater Slough and drain water from irrigation ditches in the Newlands Project.⁵

IX.

Application 79645 was timely protested by the Candy Kyle Peck on the following grounds:⁵

We the Weishaupt Family Trust are under the Freeman Contract, dated August 18, 1919, between John W. Freeman Company and the United States of America, which under Section 6 states delivering of water to said ranch will be at two

⁴ File No. 79645, official records in the Office of the State Engineer.

⁵ File No. 79646, official records in the Office of the State Engineer.

points designated by said landowner. The applicant has no easement across protestants' property for delivery of water to applicant's property. The Stillwater Slough is a drain to be designated as a canal now through our ranch will adversely affect our bridges and erode the banks depleting our land. The application, if granted, will adversely affect protestants [sic] vested water rights.

X.

Application 79646 was timely protested by the Candy Kyle Peck on the following grounds:

We the Weishaupt Family Trust are under the Freeman Contract dated August 18, 1919, between John W. Freeman Company and the United States of America, which is [sic] under Section 4 and states as successor in interes[t] [sic], we are entitled to the waters that come through our ranch. The application, if granted, will adversely affect protestants [sic] vested water rights.

XI.

Applications 79645 and 79646 were timely protested by the United States, Bureau of Reclamation on the following grounds:

1. Possible adverse impacts to Newlands Project OCAP efficiencies.
2. The United States Bureau of Reclamation joins and incorporates by reference the protest points filed by the United States Fish and Wildlife Service on this application.

XII.

Application 79645 was timely protested by the United States Fish and Wildlife Service on the following grounds:

1. Water is not available to appropriate in the manner described.
2. This application is for drain water from the Stillwater Slough and drain water from irrigation ditches within the Newlands Reclamation Project. This water is already fully appropriated to the United States, is under the control of the Secretary of the Interior for the benefit of the Newlands Reclamation Project and is not available for further appropriation under state law.
3. Water within a Federal Reclamation Project is not subject to further appropriation under Federal law. This water within the Newlands Reclamation Project is not subject to appropriation, nor is there sufficient water available for appropriation at this point of diversion to support the application.
4. This application is inconsistent with Nevada law for the appropriation of irrigation waste water, excess water and drain water.

XIII.

Application 79646 was timely protested by the United States Fish and Wildlife Service on the following grounds:

1. Water is not available to appropriate in the manner described.
2. The Applicant does not have legal access to the point of diversion.
3. This application is for drain water from the Stillwater Slough and drain water from irrigation ditches within the Newlands Reclamation Project. This water is already fully appropriated to the United States, is under the control of the Secretary of the Interior for the benefit of the Newlands Reclamation Project and is not available for further appropriation under state law.
4. Water within a Federal Reclamation Project is not subject to further appropriation under Federal law. The water within the Newlands Reclamation Project is not subject to appropriation.
5. Under current project operations, there is no water of any type available at the point of diversion. Operational spills, irrigation waste water, excess water and drain water are being diverted through an existing water control structure to wetlands at Stillwater National Wildlife Refuge, not to Stillwater Slough.
6. This application is inconsistent with Nevada law for the appropriation of irrigation waste water, excess water and drain water.

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.365(4) 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 Nevada. The State Engineer finds that in the case of Applications 47786, 48476, 79645 and 79646, inclusive, there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

II.

The State Engineer finds that by letter dated February 24, 2010, the Applicant's legal counsel indicated that Applications 79645 and 79646 are essentially duplicates of Applications 47786 and 48476 and were filed as a precautionary measure because of another case that was pending in the Nevada Supreme Court. The State Engineer finds that taking action on Applications 47786 and 48476 enables action on Applications 79645 and 79646.

III.

The TCID argues, citing to *Gallio v. Ryan*, 52 Nev. 330, 344-345 (1930), that there is no legal basis to issue a permit for appropriation of drain water and that there can be no right to a specific quantity of drain water or continued access to drain water. In *Gallio*, the court held that

waste water is subject to capture and use, but that is the limit and extent of the right. “The user cannot impose upon the owner permitting the waste or escape of the water to cause it to be wasted or to require the continuance of its flow.” *Id.* at 344. The court found that where one has acquired the right to waste water from the ditches or laterals of another, he does not become vested with any control of any such ditches or laterals, or the water flowing in them, nor is the owner of such ditches required to continue or maintain conditions so as to supply the appropriation of waste water at any time or in any quantity, when acting in good faith. The court found that the authorities are all to the effect that a claimant to waste water acquires a temporary right only to whatever water escapes from the works or land of others, and which cannot find its way back to its source of supply. Such a use of water does not carry with it the right to any specific quantity of water or the right to interfere with the water flowing in the ditches or works of others lawfully appropriating it. While the water so denominated as waste water may be used after it escapes, no permanent right can be acquired to have the discharge kept up, either by appropriation or a right by prescription, estoppel, or acquiescence in its use while it is escaping. *Id.* at 345.

The State Engineer finds the argument that drain water cannot be appropriated somewhat disingenuous as the TCID and USFWS have both previously either had applications on file or held water rights for drain water within the Newlands Reclamation Project. In 1927 and 1928, TCID filed Applications 8148 (source Stillwater Slough), 8724 (source Old River, North Branch of Lower Carson River), 8725 (source Old River, North Branch of Lower Carson River), 8726 (source Old River, North Branch of Lower Carson River) for use of Carson River water. These applications were not withdrawn until February 2009 and July 2012. Additionally, TCID holds State issued water rights for drain water. *See*, Permit 13472, Certificate 6474 (source of appropriation Rice Drain), Permit 13473, Certificate 6475 (source of appropriation “L” Drain), Permit 13474, Certificate 6476 (source of appropriation Carson Lake Drain).

In the 1950s, the USFWS and State of Nevada Fish and Game Commission filed Applications 13347 and 13348 to appropriate drain water from Stillwater Slough (otherwise known as the Diagonal Drain). TCID filed protests to those applications on grounds nearly identical to the protests under consideration as to Applications 47786 and 48476. However, by Agreement dated November 26, 1948, between the TCID, Nevada State Board of Fish and Game Commissioners (NBFG), and the U.S. Fish and Wildlife Service, TCID agreed to granting the NBFG and USFWS the right to develop certain land and administer those lands for a wildlife refuge (Stillwater Wildlife Management Area), and agreed to allow them to use all waste water not utilized by the TCID in the operation of the Newlands Project. Under the Stillwater Return

Flow Water Right Agreement dated September 8, 1987, the TCID, USFWS and Nevada Department of Wildlife agreed to the State Engineer issuing water rights using drain water, when such water is available, and that the 1987 agreement is an extension of and in addition to the 1948 agreement. Thus, TCID has by agreement rescinded its objection to the issuance of the State permitted water rights for the delivery of drain water for use in the Stillwater Wildlife Management Area and agreed to the issuance of State permitted water rights utilizing drain water.

The State Engineer finds this protest ground to be without merit. The State Engineer finds that these same Protestants filed for drain water rights, that TCID held on to similar applications for over 80 years asserting a right to appropriate drain water, that TCID agreed to the issuance of water rights for drain water, that the USFWS currently holds water rights issued under Nevada law within the Newlands Reclamation Project for the use of drain water, and that the legal argument is not supported by Nevada case law. The State Engineer finds that any permit issued for drain or waste water does not create in the applicant any permanent right to have the discharge maintained, does not create any right to a specific quantity of water or the right to interfere with anyone else who has lawfully appropriated water flowing in Stillwater Slough. The State Engineer finds that Stillwater Farms' statement that it filed the Application in order to establish an enforceable right to this water does not comport with the law and no enforceable right to drain or waste water can be established under Nevada law.

IV.

The USFWS asserts that this water is already fully appropriated by the United States, is under the control of the Secretary of the Interior for the benefit of the Newlands Reclamation Project, and is not available for further appropriation under State law. Also, that water within a Federal Reclamation Project is not subject to further appropriation under Federal law and that the water within the Newlands Reclamation Project is not subject to appropriation. The State Engineer finds this argument lacks merit as this very Protestant holds State permitted water rights for drain water within the Newlands Reclamation Project. In fact, the Reclamation Act itself provides "[t]hat nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the law of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws..." *Nevada v. U.S.*, 103 S.Ct. 2906, 2914 (1983).

V.

The TCID protested Applications 47786 and 48476 on the grounds that the waters of the Carson and Truckee Rivers are fully appropriated and that any application for further appropriations should be denied. At the time Applications 47786 and 48476 were filed in 1984, the U.S. District Court had decreed that the water of the Carson River was fully appropriated.⁶ No such declaration was found in the Truckee River Decree.⁷ Additionally, the TCID asserts that all surplus flows are accounted for in applications and agreements, which provide that the surplus flows will go for the benefit of the Stillwater Wildlife Management Area.⁸

The United States Fish and Wildlife Service protested Applications 47786 and 48476 on the grounds that the applications are for drain water from the Stillwater Slough and drain water from irrigation ditches within the Newlands Reclamation Project, and that this water is already fully appropriated by the United States, is under the control of the Secretary of the Interior for the benefit of the Newlands Reclamation Project, and is not available for further appropriation under State law. It asserts that under current project operations, there is no water of any type available at the points of diversion, and that operational spills, irrigation waste water, excess water and drain water are being diverted through an existing water control structure to wetlands at Stillwater National Wildlife Refuge, not to Stillwater Slough.

Application 47786: By letter dated June 10, 2009, Stillwater Farms indicates at certain times during the irrigation season, during the delivery of irrigation water rights on the S-Line Canal, some water in the canal is not delivered and makes its way to the end of the canal, and that the TCID and the farmers refer to this water as “mismatched” water. Stillwater Farms further indicates that Application 47786 was filed to clarify the historic practice that when this mismatched water was found at the point of diversion identified under Application 47786, it was allowed to flow through the same (proposed) point of diversion to Stillwater Slough where it then flowed to Stillwater Farms. However, Stillwater Farms also indicates that in May 2009 a dispute arose over this water. The USFWS requested delivery of this mismatched water through its prime delivery structure and for it to go to Stillwater Wildlife Refuge, and that TCID decided to send the water to the USFWS instead of following the historic practice of letting the water out

⁶ Finding of Fact II, Final Decree in *United States v. Alpine Land & Reservoir Co.*, Civil No. D-183 BRT (D. Nevada 1980).

⁷ Final Decree in *United States v. Orr Water Ditch Co.*, In Equity Docket No. A-3 (D. Nevada 1944).

⁸ April 9, 2009, Report to State Engineer provided by TCID, File No. 47786, official records in the Office of the State Engineer.

through the point of diversion proposed under Application 47786. The State Engineer finds the Answer continues to point out the confusion as to what water the Applicant is trying to appropriate; is it drain water, mismatched water or what?

By Answer filed on December 14, 2012, Stillwater Farms asserts that this water is “mismatched water”, run-off, flood water and other waste water, not prime water from the Carson or Truckee Rivers. Therefore, it asserts that the fact that the Carson and Truckee Rivers are fully appropriated is irrelevant to Application 47786. The State Engineer finds the Applicant’s own Answer indicates that the water applied for is not solely “drain” water as that type of water is understood to be. Just because water finds its way to the end of the S-Line Canal, does not make it “drain water.” Stillwater Farms asserts that the diversion of this water to the Stillwater Wildlife Refuge is illegal as the USFWS does not hold a valid water right issued under state law that allows the diversion and asserts the State Engineer should prohibit this unlawful diversion. The USFWS holds a total of 99 State issued water right permits that allow for the diversion of 28,449.61 acre-feet of water. The point of diversion under those applications is Lahontan Dam and the place of use is all federally owned or controlled land within the approved boundary of the Stillwater National Wildlife Refuge. As with any other water right holder within the project, the USFWS can call for its water at any time during the irrigation season. Due to the size of the Stillwater National Wildlife Refuge, there are multiple headgates through which these direct rights can be delivered, including the headgate at the point of diversion under Application 47786 on the “S” Line Canal. Over 4,000 acre-feet of State water right permits have been issued to USFWS since May 2009, and could make up the water delivered to Stillwater National Wildlife Refuge. The State Engineer finds the water at the proposed point of diversion under Application 47786 is not available for appropriation. Further, if the Applicant truly believes that illegal use of water is taking place within the Project without the benefit of a water right, that issue should be taken to the decree court with jurisdiction and not resolved by the State Engineer.

Application 48476: By Answer filed on December 14, 2012, Stillwater Farms asserts that Stillwater Slough contains unappropriated drain water, some of which is run-off from water use on lands that drain into Stillwater Slough, some is flood water and other waste water. It states that the “Stillwater Slough collects and eventually transports all of this drain water north-east to what is known as the Stillwater Slough Cut-off, which runs north to the Stillwater property and the point of diversion for the Application. Stillwater Farms filed the Application in

establish an enforceable right to this water.”⁹ As noted above, the State Engineer finds that Stillwater Farms cannot establish an enforceable right to drain water.

The Answer further indicates that the USFWS currently holds the only active water right to appropriate drain water from the Stillwater Slough. USFWS holds Permit 13348, Certificate 14846, which entitles it to appropriate 25.1 cfs, not to exceed 14,696.33 acre-feet annually, of drain water from Stillwater Slough Diversion. The Answer indicates that the USFWS used to hold Permit 13347, which entitled it to appropriate 34.9 cfs of drain water from Stillwater Slough, otherwise known as the Diagonal Drain. However, Permit 13347 was canceled on February 26, 1999; therefore, the Applicant asserts it is next in line and should be allowed to appropriate this drain water.

The State Engineer finds that the water sought for appropriation under Application 48476 has been collected in Stillwater Slough similarly to the water permitted to USFWS under Permit 13348. Stillwater Farms owns the remaining land down gradient in the Newlands Reclamation Project; therefore, TCID’s claim that the water is necessary for use within the Project is without merit. Since Stillwater Farms is the last landowner within the Project on Stillwater Slough, there is no claim of water to be used within the project by TCID. Aerial photography shows that with the existing ditches that are in place, USFWS does not need to receive water that has flowed through Stillwater Farms, to maintain the level of water delivered to the Stillwater National Wildlife Refuge, and the USFWS has not applied to appropriate the waters of Stillwater Slough down gradient of Permit 13348; thus, at times there may be drain water available for appropriation.

VI.

The TCID protested Applications 47786 and 48476 on the grounds that TCID has previously made application for permits to appropriate the waters applied for under Applications 47786 and 48476, which were at that time still pending before the State Engineer. The State Engineer finds that all of TCID’s applications for the waters applied for under Applications 47786 and 48476 have been withdrawn; therefore, the protest ground is dismissed.

VII.

Applications 47786 and 48476 were timely protested by Candis Kyle Peck and Kathy Mort on grounds the Applicant has no easement across Protestants’ property for delivery of water to Applicant’s property. They also assert that the Stillwater Slough is a drain to be

⁹ Answer, File No. 48476, official records in the Office of the State Engineer.

designated as a canal now through their ranch, which will adversely affect their bridges and erode the banks depleting their land, and if the applications are granted, it will adversely affect Protestants' vested water rights.

In the Applicant's answer to the protests, it asserts that these waterways can be used to deliver Newlands Project prime water to Stillwater Farms and the Peck/Mort properties under the Freeman Agreement. It presents an argument as to why it has an easement, but the State Engineer declines to venture into areas of property law not under his jurisdiction. The Applicant also asserts that these waterways historically transported the water applied for under Application 47786 and there is no information indicating that use has impacted the banks and bridges on the Protestants' property. Finally, the Applicant asserts in its Answer that while the Protestants are a successor-in-interest under the Freeman Agreement and may be entitled to receive Newlands Reclamation Project Water, the water applied for is not Project water, but drain water.

The State Engineer finds that since Application 47786 is being denied, the protest claims are moot. The State Engineer finds that the proposed point of diversion under Application 48476 is downstream of the Protestants' property, that water already flows through the drain/canal to the proposed point of diversion and the only right the Applicant can obtain is to the capture of the drain water that reaches the point of diversion; therefore, the use of the water will not interfere with the Protestants' vested water rights as they are upstream of the proposed point of diversion.

VIII.

The State Engineer finds that Applications 79645 and 79646 are identical to Applications 47786 and 48476. Application 79645 seeks to appropriate the same water that was granted under Application 48476 and there is no additional water available for appropriation. Application 79646 seeks to appropriate the same water that was denied under Application 47786 and is subject to denial for the same reasons.

IX.

In its protests to Applications 79645 and 79646, the United States Bureau of Reclamation asserts that it joins and incorporates by reference the protest points filed by the United States Fish and Wildlife Service on these applications. Nevada Revised Statute § 533.365 provides that any interested person may file a written protest setting forth with reasonable certainty the grounds of such protest, which must be verified by affidavit of the protestant, agent or attorney thereof. An affidavit is a written declaration or statement of facts confirmed by oath or affirmation of the party making it, before a person having authority to administer such oath or

affirmation. A protestant cannot make an oath or affirmation that facts stated are true to someone else's statement when they do not even know the content of the other statement. The State Engineer finds this protest ground to be without merit and dismisses the claim.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁰

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:¹¹

- 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 the drain water sought for appropriation under Application 48476 is subject to appropriation, but not in the traditional sense of appropriation. The Nevada Supreme Court held in *Gallio v. Ryan*, 52 Nev. 330, 344-345 (1930) that waste water is subject to capture and use, but that is the limit and extent of the right. The user cannot impose upon the owner permitting the water or escape of water to cause it to be wasted or to require the continuance of its flow. The court held that where one has acquired the right to use waste water from the ditches or laterals of another, he does not become vested with any control of any such ditches or laterals, or the water flowing in them, nor is the owner of such ditches required to continue or maintain conditions so as to supply the appropriation of waste water at any time or in any quantity, when acting in good faith. The State Engineer concludes that the Applicant only acquires a temporary right to whatever water escapes from the works or land of others, and which cannot find its way back to its source of supply. Such a use of water does not carry with it the right to any specific quantity of water or the right to interfere with the water flowing in the ditches or works of others lawfully appropriating it. The State Engineer concludes no permanent right can be

¹⁰ NRS Chapter 533.

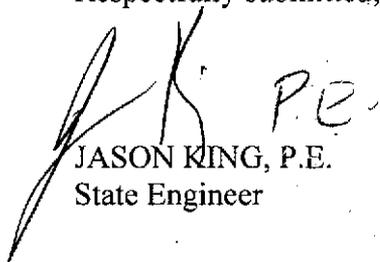
¹¹ NRS § 533.370(2).

acquired to have the discharge kept up and no enforceable right to drain or waste water can be established under Nevada law.

RULING

Application 47786 is hereby denied on the grounds that no water is available for appropriation. The protests to Application 48476 are hereby overruled and the application granted subject to existing rights and the payment of statutory permit fees. Applications 79645 and 79646 are hereby denied on the grounds that there is no water available for appropriation.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 23rd day of
May, 2013.