

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

IN THE MATTER OF APPLICATION 85377 )  
FILED TO CHANGE THE PLACE OF USE OF A )  
PORTION OF THE PUBLIC WATERS OF THE )  
ORR DITCH DECREE CLAIM NOS. 655, 656, )  
657, 658, 659 AND 675, WITHIN THE )  
PLEASANT VALLEY HYDROGRAPHIC BASIN )  
(88), WASHOE COUNTY, NEVADA. )

**RULING**  
**#6344**

**GENERAL**

**I.**

Application 85377 was filed on August 7, 2015, by the Paul and Katherine Solaegui Family Trust to change the place of use of 0.721 cubic feet per second, not to exceed 129.53 acre-feet as decreed, a portion of the waters of the Galena or Steamboat Creek previously appropriated under Claims 655, 656, 657, 658, 659 and 675 of the *Orr Ditch Decree*, for as decreed purposes.<sup>1</sup> The existing place of use is described as being 28.61 acres located within a portion of the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 8, T.17N., R.20E., M.D.B.&M., being further described as a portion of Washoe County Assessor's Parcel No. (APN) 050-120-19. The proposed place of use is described as being 28.61 acres located within portions of the SW $\frac{1}{4}$  SE $\frac{1}{4}$  and SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 5; a portion of the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 7; and portions of the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$  and NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 8, T.17N., R.20E., M.D.B.&M., being further described as portions of Washoe County APNs 050-120-19, 050-132-01 and 050-132-02. The existing and proposed points of diversion as decreed in the *Orr Ditch Decree*<sup>2</sup> are located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 12, T.17N., R.19E., M.D.B.&M. (Main Ditch and its branch and Mill Ditch), NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, T.17N., R.20E., M.D.B.&M. (Railroad Ditch a.k.a. Upper Sauer Ditch), NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, T.17N., R.20E., M.D.B.&M. (George S. Smith Ditch), NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, T.17N., R.20E., M.D.B.&M. (Valley and Stockyards Ditch), SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 7, T.17N., R.20E., M.D.B.&M. (Last Chance Ditch), SE $\frac{1}{4}$  of Section 7, T.17N., R.20E., M.D.B.&M. (Spring and Waste from Smith Ranch), and near the west line of Section 8, T.17N., R.20E., M.D.B.&M. (Hillside Ditch).

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<sup>1</sup> File No. 85377, official records in the Office of the State Engineer.

<sup>2</sup> Final Decree in *United States v. Orr Water Ditch Co.*, In Equity Docket No. A-3 (D. Nevada 1944).

## II.

Application 85377 was timely protested by Virginia (Ginger) E. Pierce on the following grounds:

The Railroad Ditch never flowed across the Solaegui property and now drains a housing development during rainstorms, and is governed by the Army Corp of Engineers.

Claims 655, 656, 657, 658, 659 are “Shared” with Winkel’s and others.

## III.

An Answer to Protest by the Applicant was received in the Office of the State Engineer on December 9, 2015.<sup>1</sup>

### **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 the state of Nevada. The State Engineer finds that in the case of protested Application 85377, 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 Protestant claims that the Railroad Ditch never flowed across the Solaegui property and now drains a housing development during rainstorms, and that it is governed by the Army Corps of Engineers.

The Federal Water Master administers the *Orr Ditch Decree* and delivers water to authorized uses through the point of diversion determined by that user’s water right. E-mail correspondence between staff of the Federal Water Master and the Division of Water Resources indicates that the Federal Water Master delivers water via the Upper Sauer Ditch on the north side of the creek and the Lower Sauer ditch on the south side of the creek.<sup>1</sup>

The Applicant is not requesting a change in the point of diversion, and the place of use is located with a portion of the existing place of use as decreed. Permit 36216, Certificate 13351, partially stripped a portion of the lands irrigated under *Orr Ditch Decree* Claim Nos. 655 through 659. Permits 36215 and 36217 also partially stripped the same lands, but through cancellation and withdrawals reverted back to the “as decreed” place of use. Since the ownership of the water

was conveyed separately from the land, the Applicant is seeking to place their portion of the existing water right on to the lands they own (in addition to consolidating their *Orr Ditch Decree* Claim No. 675 water right) so that they can enjoy their water right within an unambiguous place of use.<sup>1,3,4</sup>

The State Engineer finds that the Application does not propose a change in how the Federal Water Master delivers water and that the Federal Water Master has jurisdiction for administration of the *Orr Ditch Decree* and the Army Corps of Engineers does not manage/govern the Railroad (a.k.a. Upper Sauer) ditch; therefore, this protest issue is without merit and is dismissed.

### **III.**

The Protestant claims the Applicant is seeking to change Galena or Steamboat Creek water that is “shared” with Winkel’s and others. The waters under the *Orr Ditch Decree*, as associated with the Galena or Steamboat Creek, are appurtenant to the land and are bought and sold the same as real property, thus allowing the claims to have multiple owners as identified by legal description and claim boundary. The State Engineer finds that multiple owners of an *Orr Ditch Decree* claim is common, and each owner’s portion is delivered to the head-gate as administered by the Federal Water Master; therefore, the statement in the protest that the *Orr Ditch Decree* Claim Nos. 655 through 659 are “shared” by others is irrelevant to the approval or denial of Applicatin 85377.

## **CONCLUSIONS**

### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

### **II.**

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>6</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>3</sup> File Nos. 36215, 36216 and 36217, official records in the Office of the State Engineer.

<sup>4</sup> Truckee River Map TR-020, official records in the Office of the State Engineer.

<sup>5</sup> NRS Chapter 533.

<sup>6</sup> NRS § 533.370(2).

- 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.**

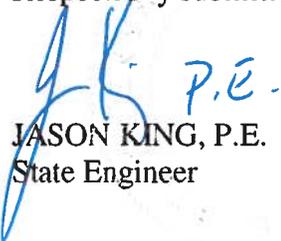
The State Engineer concludes that Application 85377 is changing the place of use of existing rights already appropriated under the Orr Ditch Decree to consolidate and better define the place of use of the water rights, and therefore the proposed change does not conflict with existing rights nor threaten to prove detrimental to the public interest.

**RULING**

The protest to Application 85377 is hereby overruled and Application 85377 is granted subject to:

- 1. Payment of the statutory permit fees;
- 2. Existing rights; and
- 3. Continuing jurisdiction by the Federal Water Master.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 5th day of  
May, 2016.