

IN THE MATTER OF APPLICATION 35555)
TO APPROPRIATE WATER FROM AN)
UNNAMED SPRING IN WASHOE VALLEY,)
WASHOE COUNTY, NEVADA)

RULING

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GENERAL

Application 35555 was filed on June 19, 1978, by Jack L. Bacon, Robert E. and Lillian M. Martin, and Ramon H. and Abigail Ryan Schmutz to appropriate 1.0 c.f.s. of the waters of an unnamed spring to be diverted within the NW 1/4 SW 1/4 Section 10, T.16N., R.19E., M.D.B.&M., and to be used for irrigation and domestic purposes on 91 acres within portions of Sections 10 and 15, T.16N., R.19E., M.D.B.&M. The application states under question 12. Remarks: "This application is to be supplemental to Permit 9268; and to the waters of Franktown Creek and its tributaries as set forth in Case No. 182418, in the Second Judicial District Court, in and for the County of Washoe."

Protests to the granting of Application 35555 were filed as follows:

- 1) On November 8, 1978, by Donald A. Cliff and Norman E. Cliff. The protest stated in part that, "---any additional water appropriations in this area may interfere with our underground water source,---."
- 2) On December 6, 1978, by Frank and Phyllis Lawrence and Russ and Deborah Sheltra. The protest stated in part that, "---this application will cause an unreasonable depression in the surrounding water table. One well specifically went dry one week after summer pumping began on this unnamed spring---."

A Reply to the November 8, 1978, Protest was filed on November 27, 1978, in behalf of the applicants by Ross E. de Lipkau. The reply stated in part, "---Application 35555 seeks to appropriate the waters of an unnamed spring, which spring is located upon the applicants' land, and has been used upon these lands for many years."

There are no appropriative rights of record upon the water flowing from the source described under Application 35555. The application became ready for action by the State Engineer's Office On December 6, 1978.

A field investigation in the matter of Application 35555 was made on January 12, 1979, by a representative of the State Engineer's Office in company with applicants and protestants as listed in the report of that field investigation on file in the State Engineer's Office.

Water flows from the spring under Application 35555 northeasterly toward a ditch about 50 feet away which conveys water from Franktown Creek. Rate of flow from the spring was visually estimated at 30 gallons per minute. Applicants stated that the spring would be developed as a spring and not as a well. There is no intent to drill a well at the spring site and pump water as from a well. Rather, the intent is to clean out the spring area and divert the water from the spring into the flood irrigation system already existing.

There is very little slope from the spring to the irrigation ditch and the spring flow is in equilibrium with its surroundings. Raising or lowering the spring outlet a little bit after restoring the spring collection works would not make a considerable difference in flow from the spring. The total flow from the spring and its surroundings to the irrigation ditch would not be changed by developing the spring as contemplated and raising or lowering the outlet works. Except for a short period after development the spring would be in equilibrium with its surroundings.

Development of the spring as contemplated under Application 35555 would not affect existing ground water rights. It is possible that pumping the nearby well under Permit 9268 (Certificate 2543) will affect their existing ground water rights, as noted by protestants at the field investigation. However, none of the existing ground water rights of protestants has an earlier priority than Permit 9268. Maps on file in this office indicate that the places of use under Permit 9268 (Certificate 2543) and Application 35555 are not completely the same. Hence, Application 35555 is not completely supplemental to Permit 9268.

From office records and from field investigation, it is concluded that the flow of water from the spring in question was accounted for in the Franktown Decree of July 11, 1960, (Case No. 182,418 in the County of Washoe). The statements pertinent to accounting for flow from the spring, from the FINDINGS OF FACT of that Decree, are as follows:

III. SOURCE

Franktown Creek and its Tributaries are located on the eastern slope of the Sierra Nevada Mountains and are fed from melting snows and springs. Typical of Nevada's mountain streams they have a high spring run-off which recedes during the summer months to a limited continuous flow.

IV. DUTY OF WATER

The seasonal rainfall, the numerous springs in the irrigated area and the fluctuating water levels in Washoe Lake contribute to a sub-irrigation condition on a large portion of the cultivated lands. This condition has been taken into consideration in establishing the duty of water in this Order.

The duty of water is herein fixed as follows:

Class A----Harvest Crop-----3.0 acre-feet per acre per season
Class B----Meadow Pasture-----1.5 acre-feet per acre per season

The maximum allowable diversion herein fixed is 2.0 c.f.s. for each 100 acres irrigated. Due to the characteristics of the stream flow, the claimants herein named or their successors in interest shall be allowed

to increase the rate of direct flow diversion to the maximum herein allowed to satisfy any immediate needs of growing crops and they may at their own option rotate the allotted water between the various fields having a decreed water right at such times and in such quantities as is necessary to place the water to the greatest beneficial use. (end of excerpt)

Continuous flow from springs feeding the irrigation ditch near the proposed point of diversion under Application 35555 would become a greater percentage of water available in the ditch late in the growing season, when runoff from melting snow has receded. Such continuous flow would become increasingly important late in the growing season for sustaining beneficial use for existing irrigation, stock watering and domestic rights under the Franktown Decree. Any additional appropriation of water from the spring area or from the spring in question would be in excess of the limits upon diversion and duty set forth in the Decree (See CONCLUSIONS OF LAW, IV), wherein it is stated, "---diverted all of such quantity of water from Franktown Creek and its tributaries and applied the same to beneficial use---."

RULING

Application 35555 is herewith denied on the grounds that there is no unappropriated water at the proposed source and that the proposed appropriation would conflict with existing rights.

Respectfully submitted,



William J. Newman
State Engineer

WJN/VRH/jm

Dated this 6th day
of APRIL, 1979.