

IN THE OFFICE OF STATE ENGINEER  
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION 29939 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNNAMED SPRING WITHIN )  
THE CARSON VALLEY HYDROGRAPHIC )  
BASIN (105), DOUGLAS COUNTY, )  
NEVADA. )

RULING

# 4768

GENERAL

I.

Application 29939 was filed on January 23, 1976, by Charles T. Ruppman to appropriate 0.1 cubic feet per second (cfs) of water from an unnamed spring which is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.13N., R.19E., M.D.B.&M. The proposed manner and place of use is for domestic purposes and the irrigation of 4.57 acres of land which are contained within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 9. The description of the proposed works of diversion and distribution system indicates that water will be obtained from an underground collection gallery and piped to a house for domestic use and to an outlet hose for landscaping purposes.<sup>1</sup>

FINDINGS OF FACT

I.

Application 29939 requests an appropriation of water from a spring source which is located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.13N., R.19E., M.D.B.&M. The formal water rights application map which was submitted in support of Application 29939 depicts the point of diversion as the entrance of a tunnel, located within the southeast portion of the Ruppman property, more specifically the

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<sup>1</sup> File No. 29939, official records in the office of the State Engineer.

SW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> of said Section 9.<sup>2</sup> Additional information contained within the application file and the records of the office of the State Engineer indicates that this water tunnel or gallery was constructed as the Firth and Schwartz Tunnel during the 1860's and is the same point of diversion claimed for historic use under Proof V-01116.<sup>3</sup> The State Engineer finds that the spring source described under Application 29939 derives its water from a water tunnel whose flows are claimed under a certificated claim of vested right.

## II.

During the 1860's, the Firth and Schwartz Tunnel was constructed at a site approximately 40 feet north of the mouth of School House Canyon. The purpose of the tunnel was to create a collection gallery for underground water which could be utilized for various purposes within a portion of the town of Genoa. This water source would also be independent from nearby School House Canyon Creek, whose waters were claimed under several certificated claims of vested water rights. The historic use of the Firth and Schwartz Tunnel as a source of irrigation and domestic water is evidenced by Proof V-01116 which was filed in the office of the State Engineer on July 6, 1912. This proof claims an 1864 priority date for the use of the water derived from the Firth and Schwartz Tunnel for domestic, irrigation and stockwatering purposes within a place of use which is separate from the place of use described under Application 29939.<sup>4</sup> The State Engineer finds

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<sup>2</sup> Application Map 29939, filed January 23, 1976, official records in the office of the State Engineer.

<sup>3</sup> School House Canyon Creek surface water file, official records in the office of the State Engineer

<sup>4</sup> Proof File No. V-01116, official records in the office of the State Engineer.

that Proof V-01116 and Application 29939 share an identical point of diversion for water use upon separate places of use.

**III.**

The distribution of water from a surface water source is controlled by the priority date established for each water right which appropriates water from the source. The senior priority appropriator has a right to divert sufficient water to satisfy the amount granted under his water right with the right of subsequent appropriators limited to surplus water over the quantities appropriated by those who are prior in time.

Application 29939 if approved would appropriate 0.1 cfs of water under a January 23, 1976, priority of use, which would be approximately 111 years junior to the earliest priority date established under Proof V-01116. The State Engineer finds that Proof V-01116 represents the senior appropriation of water from the subject source, therefore, an appropriation of water from this source can occur under Application 29939 only if there is excess water above and beyond the 0.04 cfs granted under Proof V-01116.

**IV.**

An informal field investigation in the matter of Application 29939 was conducted by personnel from the office of the State Engineer at the proposed point of diversion on May 19, 1999. At the time of the investigation the flow of water from the source was estimated to be approximately 0.004 cfs.<sup>5</sup> The State Engineer finds that the source of water requested for appropriation under Application 29939 is fully appropriated under an existing water right.

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<sup>5</sup> Report of Field Investigation No. 992, dated July 28, 1999, official records in the office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>6</sup>

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>7</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

Application 29939 if approved, would represent the junior appropriation on the subject source. A junior appropriator is entitled to divert only that portion of the flow which is in excess of the quantity to which the senior appropriator is entitled to. Proof V-01116 is entitled to divert 0.04 cfs of water from a source whose flow has been recently estimated to be less than 0.004 cfs. The State Engineer concludes that there is no excess flow of water available for appropriation above and beyond that required to satisfy the senior water right, therefore, any additional appropriation of water under Application 29939 would conflict with the right to divert water established under Proof V-01116.

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<sup>6</sup> NRS Chapter 533.

<sup>7</sup> NRS § 533.370(3).

IV.

Proof V-01116 accounts for all of the flow which the subject source is capable of producing. The State Engineer concludes there is no unappropriated water at the subject source.

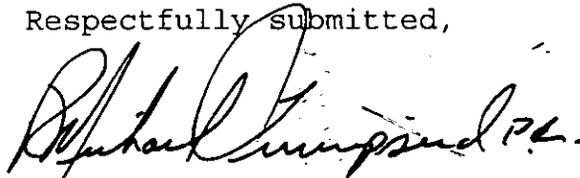
V.

Application 29939 requests an appropriation of 0.1 cfs of water from a source whose flow is totally committed under an existing water right. The State Engineer concludes that the approval of an additional appropriation from a source which is fully appropriated would threaten to prove detrimental to the public interest.

**RULING**

Application 29939 is hereby denied on the grounds that there is no unappropriated water available at the proposed source, and that its approval would conflict with existing water rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/cl

Dated this 11th day of  
August, 1999.