

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

IN THE MATTER OF APPLICATIONS 13383)
AND 14333 FILED TO CHANGE THE PLACE)
AND MANNER OF USE OF THE PUBLIC)
WATERS OF THE STATE OF NEVADA)
FROM DUVAL OR ENT SPRING WITHIN THE)
WASHOE VALLEY GROUNDWATER BASIN)
(089) WASHOE COUNTY, NEVADA.)

RULING

4732

GENERAL

I.

Application 13383 was filed on May 23, 1950, by the Virginia and Truckee Ry. Co. to change the place of use and manner of use of 0.5 cubic feet per second (cfs) of water from Duval or Ent Spring claimed by the Virginia and Truckee Ry. Co. to have been historically used for railroad purposes within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T.16N., R.19E., M.D.B.&M. The proposed manner of use is for the irrigation and domestic purposes within the NW $\frac{1}{4}$ of Section 10, T.16N., R.19E., 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 9, T.16N., R.19E., M.D.B.&M.¹

II.

Application 14333 was filed on June 16, 1952, by Henry E. or Minnie E. Heidenreich to appropriate 0.8 cfs of water from Duval or Ent Spring for the irrigation and domestic purposes within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, both in T.16N., R.19E., M.D.B.&M. The proposed point of diversion is described as

¹ File No. 13383, official records in the office of the State Engineer.

being located within the NE¼ NE¼ of Section 9, T.16N., R.19E.,
M.D.B.&M.²

III.

Application 13383 was timely protested by Emily Pentz Wood and by James H. Lathrop, on behalf of the Board of Trustees, Franktown School District.¹

Application 14333 was timely protested by the Board of Trustees, Franktown School District and by Emily Pentz Wood.²

Applications 13383 and 14333 were protested by the Franktown School District on the grounds that: (1) the applicant had abandoned all its railroading operations and that the purpose proposed by the applicant did not pertain to railroading; (2) upon abandoning its railroad operations all its rights reverted to the successors in interest of Mrs. F.A. Ent; (3) several years prior to 1900 and at all times subsequent thereto the Protestant had appropriated and applied to beneficial use for domestic and school purposes water from Duval or Ent Spring; (4) all waters of said spring are appropriated; (5) the maximum average flows are approximately 5 gallons per minute and, therefore, are insufficient for irrigation purposes; (6) the issuance of this application would reduce the present flow to the school and deprive the children attending school; and (7) the issuance of a permit for these applications would be detrimental to the vested rights of the protestant.

² File No. 14333, official records in the office of the State Engineer

Application 13383 was protested by Emily Pentz Wood on the grounds that: (1) the alleged vested rights acquired in February 1881 by indenture of deed dated February 14, 1881, wherein Mrs. F. A. Ent was grantor, were for railroading only, and the applicant has abandoned those railroad operations; (2) upon abandoning its railroad operations the vested rights reverted back to the successor of Mrs. F. A. Ent; (3) several years prior to 1881 and at all times subsequent there to the Protestant had appropriated and applied to beneficial use for domestic and stockwatering purposes the waters of Duval or Ent Spring; (4) all of said waters are appropriated; (5) all water not used for railroading has been put to beneficial use for stockwatering and domestic use; (6) for the last ten years past practically all the waters have been put to beneficial use by the Protestant; (7) the maximum average flows are approximately 5 gallons per minute and, therefore, are insufficient for irrigation purposes; (8) the issuance of a permit on this application would reduce and interfere with her vested right and take from her fire protection facilities; (9) the original deed reserved water for a water trough and household use and issuance of a permit would violate such covenant; (10) intent of sale to applicant was to promote business for Mrs. Ent's hotel, bar and restaurant and that by abandoning the railroad the consideration for said deed has failed; and (11) the application provides insufficient information regarding the proposed works, manner, means and place of use.

Application 14333 was protested by Emily Pentz Wood on the grounds that: (1) several years prior to 1881 and at all times

subsequent there to the Protestant had appropriated and applied to beneficial use for domestic and stockwatering purposes the waters of Duval or Ent Spring; (2) all of said waters are appropriated and put to beneficial use and that there is no surplus water; (3) any effort to increase the flow from said spring might be detrimental to existing rights; and (4) the application provides insufficient information regarding the proposed works, manner, means and place of use.

FINDINGS OF FACT

I.

On May 12, 1994, an informal field investigation was conducted at the proposed point of diversion by personnel from the office of the State Engineer.^{1,2} The purpose of the investigation was to determine if water was available for appropriation from Duval or Ent Spring under Applications 13383 or 14333. The field investigation found that the original water tunnel was collapsed and that a ½ inch diameter PVC pipe installed into the tunnel was flowing less than ½ gpm. The State Engineer finds that the improvements that had been made to Duval or Ent Spring have fallen into a state of disrepair thereby diminishing the amount of flow available to appropriate from this source.

II.

The Virginia and Truckee Railroad filed a petition to abandon the railway between Carson City and Reno on April 19, 1950 with the Public Service Commission and the Interstate Commerce

Commission, and abandoned it with the last train running on May 31, 1950.³

The State Engineer finds that the utilization of water from Duval or Ent Spring for railroading ended with the abandonment of the railway.

III.

Proof of appropriation of water for stockwatering purposes V-02974 was filed on September 19, 1977, by D.B. Azevedo as successor to the original owner of the spring and its rights for 6 cattle and 6 horses.⁴

The State Engineer finds that an undetermined claim of vested right for stockwatering purposes is currently filed on Duval or Ent Spring.

IV.

NRS § 533.367 provides that "[b]efore a person may obtain a right to the use of water from a spring or water which has seeped to the surface of the ground, he must ensure that wildlife which customarily uses the water will have access to it."

The State Engineer finds that Duval or Ent Spring has insufficient flow to satisfy the existing claimed rights, wildlife requirements and those proposed under either Application 13383 or 14333.

³ Silver Short Line, History of the V & T Railroad, Ted Wurm & Harre W. Demoro, 1983.

⁴ Proof file No. 02974, 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.⁵

II.

The State Engineer is prohibited by law from granting an change application to appropriate the public waters where:⁶

- A. the proposed use conflicts with existing rights; or
- B. the proposed use threatens to prove detrimental to the public interest.

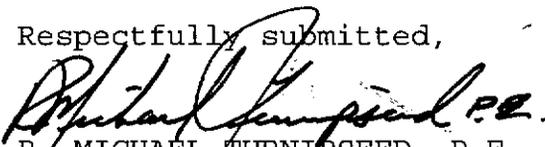
III.

The State Engineer concludes that the approval of either Application 13383 or 14333 would violate the provisions established under NRS § 533.367.

RULING

Applications 13383 and 14333 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJB/cl

Dated this 11th day of
May, 1999.

⁵ NRS Chapter 533.

⁶ NRS § 533.370(3).