

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

IN THE MATTER OF APPLICATION 43579)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF WILLOW CANYON CREEK WITHIN)
THE SMITH VALLEY HYDROGRAPHIC BASIN)
(107), LYON COUNTY, NEVADA.)

RULING

4761

GENERAL

I.

Application 43579 was filed on April 21, 1981, by Thomas J. Wipfli, to appropriate one cubic foot per second (cfs) of water from Willow Canyon Creek for irrigation of 35.2 acres within NW¼ SW¼ of Section 28, T.12N., R.23E., M.D.B. & M. The proposed point of diversion is described as being a diversion box located within the SW¼ NW¼ of Section 29, T.12N., R.23E., M.D.B. & M. Title to Application 43579 is currently in the name of Thomas J. Wipfli.¹

II.

Application 43597 was timely protested on December 22, 1981, by the United States of America, Bureau of Land Management, generally on the grounds that that the Bureau of Land Management needs to guarantee water availability for present and future livestock grazing and wildlife use, the area is a key winter deer range, and an estimated 1200 sheep use this Spring Gulch grazing allotment from January 1 to May 31 each year.¹

III.

Permit 13537 was issued on April 12, 1951, to Grace Marcovich for appropriation of 1.60 cfs of water from Willow Canyon Creek for irrigation of 160 acres. The point of diversion is at the same point as proposed by Application 43579, SW¼ NW¼ Section 29, T.12N., R.23E., M.D.B. & M. Certificate 4025 was issued January 25, 1954, to Grace Marcovich for 0.4 cfs, not to exceed 19.2 acre-feet per season, for irrigation of 4.8 acres of land within the NW¼ SW¼ Section 28, T.12N., R.23E., M.D.B. & M. Water was conveyed to the

¹ File No. 43579, official records in the office of the State Engineer.

place of use through a 3-inch diameter pipeline. Title to Permit 13537, Certificate 4025 was assigned to Mitchell J. Geissinger and Catherine Lee Geissinger on October 24, 1994.²

FINDINGS OF FACT

I.

An informal field investigation held at Willow Canyon Creek on April 8, 1998, confirmed diversion and beneficial use of water under Permit 13537, Certificate 4025, and estimated the diversion at less than 0.3 cfs from the diameter of the pipe and fullpipe equation. No water flowed in the canyon below the diversion box. Sheep were grazing near the point of diversion and in the canyon at the time of the field investigation.²

II.

Another informal field investigation was conducted June 24, 1999. Stream flow was measured at 0.171 cfs with a V-notch weir above the point of diversion of Permit 13537, Certificate 4025. No water flowed in the canyon below the diversion box. Sheep had recently grazed in the lower canyon near the diversion box but had left the area by the time of the informal investigation. Alfalfa hay was being baled on the place of use of Permit 13537, Certificate 4025.²

The State Engineer finds that stream flow measurements suggest that availability of water from Willow Canyon Creek is only sufficient for the water right requirement under Permit 13537, Certificate 4025.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.³

² File No. 13537, official records in the office of the State Engineer.

³ NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁴

- 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.

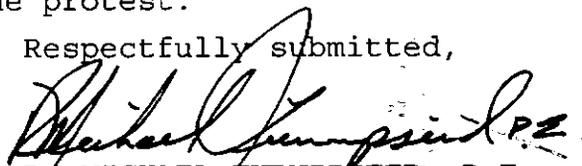
III.

Application 43579 requests an appropriation of water which exceeds the flow of Willow Canyon Creek. The State Engineer concludes that the granting of Application 43579 would conflict with an existing water right which appropriates water from Willow Canyon Creek.

RULING

Application 43579 is hereby denied on the grounds that its approval would conflict with an existing water right. No ruling is made on the merits of the protest.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/CAB/cl

Dated this 5th day of
August, 1999.

⁴ NRS § 533.370(3).