

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

IN THE MATTER OF APPLICATIONS )  
66455, 66456 AND 66467 FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF )  
JAMES CANYON CREEK AND ITS )  
TRIBUTARIES WITHIN THE CARSON )  
VALLEY HYDROGRAPHIC BASIN (105), )  
DOUGLAS COUNTY, NEVADA. )

**RULING**

**#5474**

**GENERAL**

**I.**

Application 66455 was filed on June 13, 2000, by Vincent P. D'Ascoli to appropriate 1.0 cubic foot per second (cfs) of water from James Canyon Creek and its tributaries. The proposed manner and place of use stated on the application is for irrigation purposes within 18.00 acres of land located within portions of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 27, the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 34 and the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 35, all within T.14N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 27, T.14N., R.19E., M.D.B.&M.<sup>1</sup>

**II.**

Application 66456 was filed on June 13, 2000, by Jay D. Marriage to appropriate 2.4 cfs of water from James Canyon Creek and its tributaries. The proposed manner and place of use stated on the application is for irrigation purposes within 100.00 acres of land located within portions of the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 34, the NW $\frac{1}{4}$  and NW $\frac{1}{4}$  SW $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 35, all within T.14N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 27, T.14N., R.19E., M.D.B.&M.<sup>2</sup>

<sup>1</sup> File No. 66455, official records in the Office of the State Engineer.

<sup>2</sup> File No. 66456, official records in the Office of the State Engineer.

**III.**

Application 66467 was filed on June 16, 2000, by Howard S. Charney to appropriate 4.7 cfs of water from James Canyon Creek and its tributaries. The proposed manner and place of use stated on the application is for irrigation purposes within 235.93 acres of land, located within portions of the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 2, T.13N., R.19E., M.D.B.&M., the E $\frac{1}{2}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 34, the E $\frac{1}{2}$  W $\frac{1}{2}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  SW $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$  and the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 35, all within T.14N., R.19E., M.D.B.&M.<sup>3</sup>

**FINDINGS OF FACT**

**I.**

All of the subject water right applications request additional appropriations of water from James Canyon Creek and its tributary sources for irrigation purposes. Under the provisions established under NRS § 533.370(4), any evaluation of these applications must take into consideration the following issues.

1. Is there sufficient unappropriated water available at the proposed source;
2. Will the approval of the applications conflict with existing water rights that appropriate water from the source; and
3. Will the approval of the applications threaten to prove detrimental to the public interest.

The term "unappropriated water" as it pertains to a surface water source, can be generally defined as the amount of stream flow that remains after the customary wildlife use and all existing water rights on the source have been satisfied. Identifying the valid water rights on James Canyon Creek and adding their respective diversion rates and associated annual duties of water determines the stream's

---

<sup>3</sup> File No. 66467, official records in the Office of the State Engineer.

committed water resource. Any sustained flow of water produced by the source that is above the committed resource, constitutes unappropriated water that may be requested for use by subsequent parties under most circumstances.

The records of the Office of the State Engineer contain a complete history of James Canyon Creek in regard to water rights that have been filed to appropriate its waters. A summary of the active water right filings associated with James Canyon Creek is presented as follows;<sup>4,5,6,7,8</sup>

File No.	Status	Priority	cfs	afa	Use	Owner
V-03696	Proof	<1900	n/a	n/a	Irr	Simek
V-03697	Proof	<1900	0.50	11.3	Stk	Simek
66970	Permit	1904	n/a	575.80	Irr	Little Mondeaux
V-09250	Proof	1904	n/a	54.20	Irr	Simek/Little Mon
V-09252	Proof	1904	0.50	11.3	Stk	Little Mondeaux
				652.6 afa	(acre-feet annually)	
66455	RFA	2000	1.0	n/a	Irr	D'Ascoli
66456	RFA	2000	2.4	n/a	Irr	Marriage
66467	RFA	2000	4.0	n/a	Irr	Charney
			7.4 cfs			

For clarity, the designation "Permit" refers to a water right application that has been approved by the State Engineer, in this case, to change the point of diversion and the place of use of an existing water right. The term "Proof" is given to a claim of vested right to the waters of James Canyon Creek that existed prior to the establishment of the State Engineer's current permitting process in 1905. The four

<sup>4</sup> File No. 66970. official records in the Office of the State Engineer.

<sup>5</sup> File No. 03696, official records in the Office of the State Engineer.

<sup>6</sup> File No. 03697, official records in the Office of the State Engineer.

<sup>7</sup> File No. 09250, official records in the Office of the State Engineer.

<sup>8</sup> File No. 09252, official records in the Office of the State Engineer.

proofs that are referenced in this ruling have not been formally adjudicated and are not involved in a pending adjudication. The three applications, which are the subject of this ruling, are all classified as "RFA", which is the abbreviation for Ready-For-Action. This term is assigned to water right applications that have passed through the initial application review, and statutory publication and protest periods, and can now be acted upon by the State Engineer. The water right filings listed in the above table have also been arranged by their respective priority dates. If a space in the table is labeled, "n/a", it signifies that the pertinent information has been poorly stated or omitted from the proof or permit.

When the priority column is reviewed, it can be seen that all of the proofs filed for appropriations of water from James Canyon Creek correctly claim a priority date prior to 1905. The priority date of a water right filing is dependent upon the classification the filings fall into. A water right permit that requests a new appropriation of water is assigned a priority date, which is identical to the date that it was filed in the Office of the State Engineer. A change permit, which is a water right that transfers an existing right to a new point of diversion, place or manner of use, upon approval inherits the priority date established under the water right that it has changed. This applies to Permit 69970, which was filed on December 1, 2000, but retains the 1904 priority date claimed under its base right, Proof V-09250.

Two of the four proofs filed to appropriate water from James Canyon Creek claim a prestatutory stock water use that is not quantified on the proof form in terms of an annual duty of water. Assuming the standard allowance of 20 gallons per day per head of cattle, the 500 head of cattle stated on each

proof would require 10,000 gallons of water per day, which equals a diversion rate of 0.0312 cfs or 22.6 afa.<sup>9</sup>

Under Proof V-09250 and Permit 66790, a combined annual duty of 630.0 afa is claimed for irrigation purposes upon 157.5 acres of land. Proof V-03696 can also be included within the irrigation filings, but it is not possible to determine its acreage or associated annual duty, due to several omissions on the proof form.<sup>6</sup> If this claim is accepted, a specific diversion rate and duty of water will be assigned to it as part of the formal adjudication procedure and this number will be added to the committed resource. Recognizing that a precise number can not be determined until the adjudication of all of the proofs, both stock water and irrigation has been accomplished, the State Engineer finds that the 652.6 afa of irrigation and stock water claimed under the proofs may represent an estimate for the committed resource, that will be adjusted once a final determination of the relative rights James Canyon Creek system has been accomplished.

## II.

Assigning an estimated value to the committed resource of James Canyon Creek completes one half of its unappropriated water equation. The second value that must be determined is the stream flow generated by the James Canyon Creek system. Until recently, the records of the Office of the State Engineer did not contain a contemporary record of the amount of water produced by the stream during the irrigation season. A report by Deputy State Engineer G.F. Engle, circa 1929, contains a series of measurements taken from August 1902 to September 1904. Item #15 of this report refers to James Canyon Creek, and states that at a point called Jacks Valley No. 1, the entire flow of the creek is used by Fred Cook to

---

<sup>9</sup> Permit Terms Handbook, pg. 19, Duties, Stock watering, official records of the Office of the State Engineer.

irrigate approximately 150 acres of meadow, pasture land. The record of flow measurement is incomplete, with two measurements taken at unknown measuring points in 1902, five during 1903 and a single measurement taken at the mouth of James Canyon in 1904.<sup>10</sup> The average of these eight measurements, all of which were taken during the irrigation season is 1.48 cfs. To improve and update this incomplete record, the Office of the State Engineer installed a flow-measuring device on James Canyon Creek on June 13, 2003. By installing a 90° V-notch weir, positioned at a suitable measuring point above all current diversions, a series of weekly stream flow measurements were recorded, with the last measurement taken on December 1, 2003.<sup>11</sup> The complete record of the 2003 measurements is included in Table 1, which is attached to this ruling. If the 2003 irrigation season is examined, the flow of James Canyon Creek peaks during the month of June and ebbs to its lowest point in October, with the average of the twenty field measurements calculated to be 0.58 cfs. This average is significantly lower than the stream flows recorded at the turn of the century, and it represents the flow at present day climatic and development conditions. The State Engineer finds that the stream flow measurements collected during the 2003 irrigation season represent a better accounting of the amount of water produced by James Canyon Creek, than the data collected during the early 1900's, and that the 2003 measurements will be used, in part, to assist in the evaluation of unappropriated water and potential conflicts with existing water rights.

---

<sup>10</sup> G.F Engle Report entitled, "Investigation of Mountain Streams Flowing into the Watershed of the Carson River in Nevada", circa 1929, this report is included within the record of the Carson River Adjudication maintained at the Office of the State Engineer.

<sup>11</sup> James Canyon Creek Stream flow Measurements, June-October 2004, streamflow index card, official records in the Office of the State Engineer.

### III.

The State Engineer accepts that seven months of weekly stream flow measurements taken during a period of prolonged drought do not represent a complete accounting of the average annual flow that the James Canyon Creek system is capable of producing. While the field data specific to James Canyon Creek is extremely limited, a long-term stream flow record has been established for nearby Daggett Creek. The United States Geological Survey (USGS) has developed an empirical relationship that allows stream flow data from one source to be applied to nearby ungaged watersheds to determine their average annual discharge. It was by this method, that the USGS was able to develop flow estimates for seven alpine streams that discharged into the western portion of the Carson Valley groundwater basin. These streams were identified by the USGS as Fredericksburg Creek, Luther Creek, Monument Creek, Mott Creek, Jobs Creek, Sierra Creek, and Genoa Creek.<sup>12</sup>

The relationships between Daggett Creek and the above referenced creeks were determined by linear regression techniques based upon the historic mean daily discharge of Daggett Creek and the cumulative discharges of the seven creeks. For the purposes of estimating the annual discharge of James Canyon Creek, the Office of the State Engineer utilized an empirical relationship developed by the USGS for Genoa Creek. This watershed (Map 1) was used because it is similar in size, elevation and aspect to the James Canyon Creek system (Map 2). The period of record used was from 1964 to 2003. Table 2 summarizes the results of the analysis on a monthly and annual basis. The resulting mean annual discharge from James Canyon Creek is approximately 600 acre-feet annually.

---

<sup>12</sup> Mauer, Douglas K., USGS Water-Resource Investigations Report 86-4328, Geohydrology and Simulated Response to Ground-Water Pumpage in Carson Valley, A River-Dominated Basin in Douglas County, Nevada and Alpine County, California, prepared in Cooperation with the Douglas County Department of Public Works, 1986.

This average is a substantial increase over the 421 acre-feet estimated from the 2003 field season. More importantly, the State Engineer finds that the 600 acre-feet determined using the linear regression technique is still less than the committed resource.

#### IV.

The senior appropriator of the water of a stream has the right to the quantity of water he has appropriated against all subsequent appropriators from the same source;<sup>13</sup> and the rights of the latter are subject to that who was first in time, regardless of their position on the stream.<sup>14</sup> The first appropriator has the right to insist that the waters he has appropriated be available for his proper use;<sup>15</sup> he has the right to their exclusive use up to the amount of his appropriation.<sup>16</sup> Simply put, a senior water right on a surface water source must be satisfied before an appropriation of water can occur under a junior appropriator. Applying this doctrine to James Canyon Creek first requires that the existing water rights be placed in a queue arranged by their respective priority dates. Based upon the information found within the proofs, the most senior rights are represented by the stock water proofs, V-03696 and V-03697, both of which loosely state their initial date of use as "pre-1900". Next in priority would be Permit 69970, which retains the 1904 priority transferred from its base right, Proof V-09220. Any water right permits approved under Applications 66455, 66456 and 66467 would be assigned priority dates of June 13, 2000, or June 16, 2000, with these dates being the most junior priorities on the James Canyon Creek system. For these junior permits to be in priority, the stream flow must surpass the

---

<sup>13</sup> Lobdell v. Simpson, 2 Nev. 274, 279 (1866); Doherty v. Pratt, 34 Nev. 343, 349, 124 Pac. 574 (1912).

<sup>14</sup> Proctor v. Jennings, 6 Nev. 83, 87 (1870).

<sup>15</sup> Barnes v. Sabron, 10 Nev. 217, 233 (1875).

<sup>16</sup> Jerret v. Mahan, 20 Nev. 89, 98 17 Pac. 12 (1888).

amount claimed under senior water rights on a sustained basis over the course of the irrigation season. If appropriations of water were to occur when the permits were not in priority, they would be made at the expense of senior water rights within the James Creek Canyon system. Under NRS § 533.370, the approval of a new appropriation of water from a surface source must not adversely affect existing rights. The State Engineer finds that the approval of the subject applications would conflict with existing water rights that appropriate water from James Canyon Creek and its tributary sources.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>17</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>18</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

#### III.

Applications 66455, 66456 and 66467 all request new appropriations of water for irrigation purposes, above and beyond what is currently being used under existing water rights. The record of stream flow measurements taken from James Canyon Creek during 2003 and the watershed discharge analysis performed by the Office of the State Engineer indicates that the stream will not support additional

---

<sup>17</sup> NRS chapter 533.

<sup>18</sup> NRS § 533.370(4).

appropriations of water during the irrigation season; therefore, the State Engineer concludes that these requests for appropriations cannot be approved.

**IV.**

The waters of James Canyon Creek are committed under four claims of a prestatutory use and a single permitted water right. If water right permits were approved for the subject applications, they would be assigned junior priorities, which could not be served during the traditional irrigation season. Any appropriations of water that occurred during those times when the junior rights are out of priority would interfere with senior water users. The State Engineer concludes that the approval of Applications 66455, 66456 and 66467 would conflict with existing water rights on the source.

**RULING**

Applications 66455, 66456 and 66467 are hereby denied on the grounds that there is no unappropriated water at the source and that their approval would conflict with existing water rights and threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/MDB/jm

Dated this 26th day  
of January, 2005.

Table 1 James Canyon Creek Stream Flow Data 2003

Date	Time	Read @stake	Read @ weir	cfs	taken by	comment
6/13/2003	09:10a.m.	0.21	0.79	1.39	mb	ok
6/16/2003	07:15a.m.	0.28	0.72	1.1	mb	ok
6/19/2003	02:15p.m.	0.32	0.68	0.955	mb	ok
6/25/2003	8:00a.m.	0.32	0.68	0.955	mb	ok
6/30/2003	07:45a.m.	0.4	0.6	0.7	mb	ok
7/7/2003	07:45a.m.	0.42	0.58	0.63	mb	ok
7/14/2003	07:48a.m.	0.44	0.56	0.59	mb	ok
7/21/2003	08:15a.m.	0.48	0.52	0.491	mb	ok
7/28/2003	07:45a.m.	0.5	0.5	0.445	mb	ok
8/4/2003	8:20a.m.	0.46	0.54	0.539	mb	ok
8/11/2003	8:30a.m.	0.48	0.52	0.491	kh	ok
8/18/2003	8:03a.m.	Read @ Weir	0.46	0.362	mb	ok
8/25/2003	2:50p.m.	Read @ Weir	0.39	0.24	sc	misread
9/2/2003	7:26a.m.	Read @ Weir	0.48	0.403	mb	ok
9/5/2003	3:00p.m.	Read @ Weir	0.48	0.403	mb	ok
9/9/2003	8:04a.m.	Read @ Weir	0.48	0.403	mb	ok
9/16/2003	8:09a.m.	Read @ Weir	0.48	0.403	mb	ok
9/25/2003	9:23a.m.	Read @ Weir	0.46	0.362	mb	ok
9/28/2003	7:58a.m.	Read @ Weir	0.46	0.362	mb	ok
10/6/2003	7:44a.m.	Read @ Weir	0.46	0.362	mb	ok
10/13/2003	7:55a.m.	Read @ Weir	0.46	0.362	mb	ok
12/1/2003	10:10a.m.	Weir was removed	0.5	0.445	mb	ok

Table 2: Correlation between Daggett Creek and Genoa Creek.

MONTH	DAGGETT CREEK HISTORICAL MONTHLY MEAN FLOWS (Period of Record 1964 - 2003)		COEFF (Y) <sup>(a)</sup>	GENOA CREEK MEAN FLOWS (See Note)	
	DAILY (CFS)	MONTHLY (AF)		DAILY (CFS) (CFS) <sup>(b)</sup>	MONTHLY (AF)
JAN	1.85	113.75	19.80	0.83	51.03
FEB	1.83	101.63	19.62	0.82	45.59
MAR	2.06	126.67	21.69	0.92	56.85
APR	2.12	126.15	22.23	0.95	56.63
MAY	2.48	152.49	25.48	1.11	68.50
JUN	2.30	136.86	23.86	1.03	61.46
JUL	1.75	107.60	18.90	0.78	48.25
AUG	1.53	94.08	16.91	0.69	42.15
SEP	1.33	79.14	15.11	0.60	35.43
OCT	1.36	83.62	15.38	0.61	37.44
NOV	1.66	98.78	18.08	0.74	44.28
DEC	1.56	95.92	17.18	0.70	42.98
<b>TOTAL (AFA)</b>		<b>1317</b>			<b>591</b>

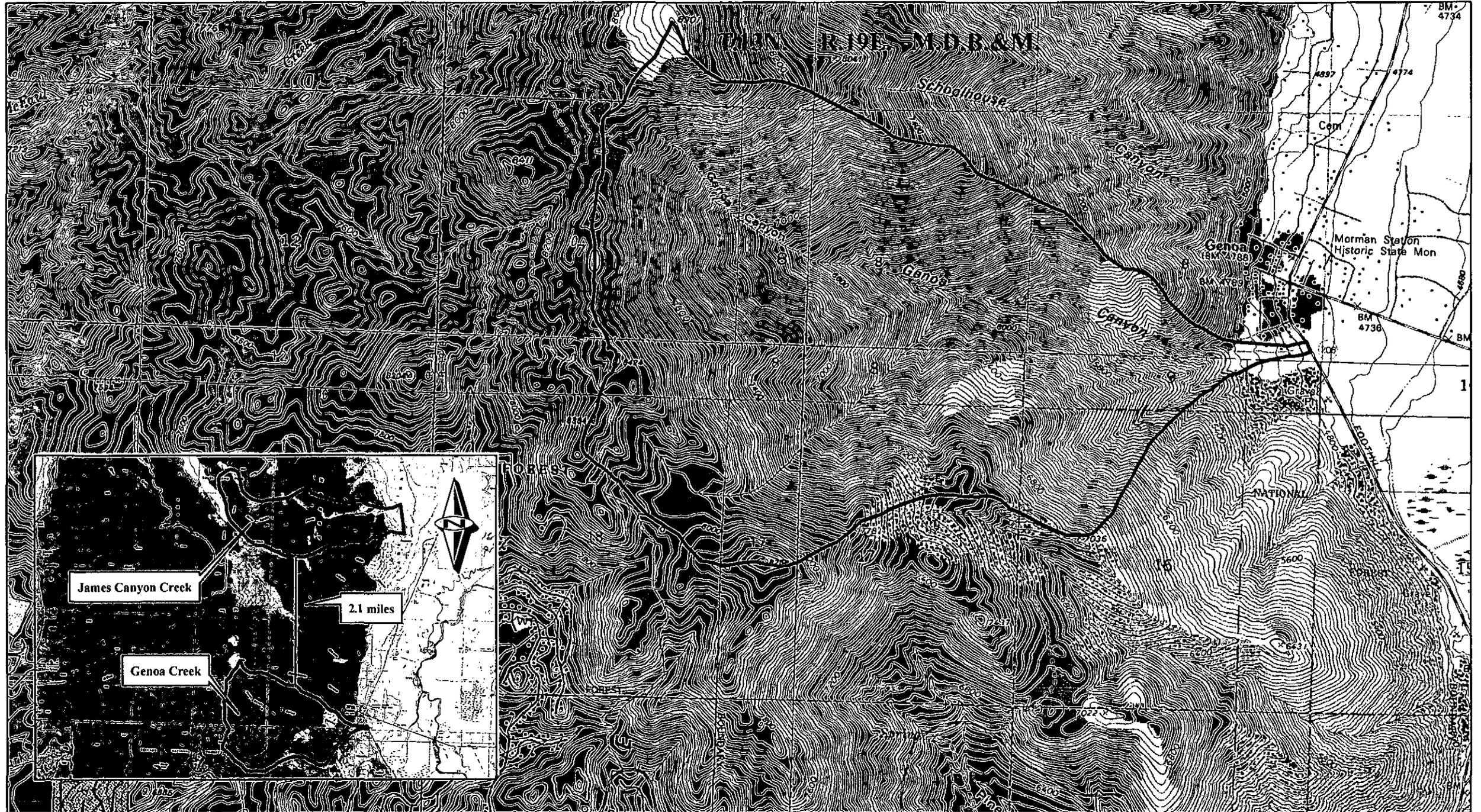
(a) BASED ON THE RELATIONSHIP OF  $Y=3.11 + 9.02(X)$ , where (X) is the discharge from Daggett Creek.

(b) BASED ON THE RELATIONSHIP OF  $y = -0.16 + 0.05(X)$ , WHERE  $X=COEFF(Y)$

SOURCE: Maurer, D. K., 1986, Geohydrology and Simulated Response to Ground-Water Pumpage in Carson Valley, A River Dominated Basin in Douglas County, Nevada, and Alpine County California: U.S. Geological Survey Water-Resources Investigation Report 86-4328, p. 14.

Note: For the purposes of estimating the annual discharge of James Canyon, the Office of the State Engineer utilized an empirical relationship developed by the USGS for Genoa Creek. The Genoa Creek watershed was used because it is similar in size, elevation and aspect to the James Canyon Creek Watershed.

Map 1 Genoa Creek Watershed



Map 2 James Canyon Creek Watershed

