

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

IN THE MATTER OF APPLICATION 74907 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF MADELINA SPRINGS WITHIN )  
THE STEPTOE VALLEY HYDROGRAPHIC )  
BASIN (179), WHITE PINE COUNTY, )  
NEVADA. )

RULING  
**#5882**

GENERAL

I.

Application 74907 was filed on October 12, 2006, by John D. Fleming to appropriate 7.0 cubic feet per second of water from a source identified upon the application as Madelina Springs. The proposed manner and place of use is for irrigation purposes within 435 acres of land located within portions of the S½ of Section 1, T.24N., R.63E., M.D.B.&M. and Lot 7 of Section 6, in addition to the N½ NW¼ of Section 7, T.24N., R.64E., M.D.B.&M. The proposed point of diversion is described on the water right application and its supporting map as being located within the NW¼ NE¼ of Section 2.<sup>1</sup>

FINDINGS OF FACT

I.

The Office of the State Engineer and the United States Geological Survey have for many years, collected and recorded spring flow data from numerous sites throughout the state. Most of this information relates either to the state's larger springs, or those that are tributaries to river systems that have been formally adjudicated. A complete record has not been made for the majority of the small, isolated springs that are found throughout the basin and range. A search of the spring flow records maintained within the Office of the State Engineer failed to identify any information specific to the flow of Madelina Springs.

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<sup>1</sup> File No. 74907, official records in the Office of the State Engineer.

Given the lack of spring flow data, a decision was made to conduct an informal field investigation at the proposed point of diversion requested under Application 74907. The purpose of this visit was to determine the amount of water that the spring was capable of producing. The observations and recommendations formed from this onsite inspection are presented in Report of Field Investigation No. 1008. The State Engineer finds that the decision to approve or deny Application 74907 will be based to a large part upon the information presented within Report No. 1008.

## II.

The guidelines governing the appropriation and allocation of surface water are set forth within the Nevada Revised Statutes (NRS). Under the provisions of NRS 533.370(5), before an application that requests a new appropriation of water can be considered for approval, it must be determined that there is unappropriated water present at the source. Unappropriated water may be defined as the amount of water that is available for capture once all senior water rights have been fully served, including any customary use of the water by wildlife. If the amount of water committed under existing water rights exceeds the amount of sustained flow produced by the source, additional requests for water through the State Engineer's application process are generally denied.

Similarly, if the source of surface water is found to be dominated by dry or extremely low flow conditions, its suitability as a reliable source of water for most manners of use is brought into question. For a surface source located within the northern portion of the state to qualify as a legitimate source of irrigation water, it must be capable of sustaining an annual flow that can provide 4.0 acre-feet of water per acre of land. This number was based upon the cultivation of alfalfa in northern Nevada, with lower duties assigned to less water intensive activities such as the irrigation of pasture. This type of irrigation has in several adjudication proceedings, been assigned

a duty of 2.0 or less acre-feet of water per acre. At this reduced level, the irrigation of the Applicant's 435 acre proposed place of use would require 870 acre-feet of water per year.

Report of Field Investigation No. 1088, states that, "Given the dry state of the spring, it is recommended that Application 74907 be denied on the grounds that there is insufficient water to irrigate the place of use described upon the application."<sup>2</sup> The State Engineer agrees with this recommendation and finds that the Madelina Springs is incapable of supporting the manner of use requested under Application 74907.

### CONCLUSIONS

#### I.

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

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</sup>

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

#### III.

Application 74907, requests an appropriation of water for a primary irrigation use that spans the entire year. A recent field visit that was performed during the traditional irrigation season recorded zero discharge at the proposed point of diversion. Based upon this fact, the State Engineer concludes the following:

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<sup>2</sup> Report of Field Investigation No. 1088, official records in the Office of the State Engineer.

<sup>3</sup> NRS chapters 533.

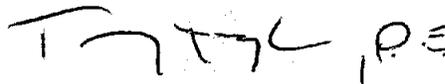
<sup>4</sup> NRS § 533.370(5).

- A) The issue of whether there is "unappropriated" water at the source is therefore reduced to the basic question of, is there sufficient flow generated by Madelina Springs to irrigate the proposed place of use, with the answer being, "no".
- B) The issue of the effect the approval of the application would have on existing water rights on the source is moot, since none exist.
- C) Viewed from the public interest standpoint, there is no public interest served in the approval of an appropriation of water for irrigation purposes from a dry spring.

RULING

Application 74907 is hereby denied on the grounds that there is insufficient water generated by this source to satisfy its proposed manner of use.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/MB/jm

Dated this 11th day of

August, 2008.