

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

IN THE MATTER OF APPLICATION 70829 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF GRUDEN SPRING WITHIN )  
THE SNAKE VALLEY HYDROGRAPHIC )  
BASIN (195), WHITE PINE COUNTY, )  
NEVADA.

**Recision of Ruling  
#5907  
and Interim  
Order No. 1**

**GENERAL**

**I.**

Application 70829 was filed on January 20, 2004, by Donald A. Duff, Snake Creek Ranch to appropriate 0.4 cubic feet per second (cfs) of water from a source identified as Gruden Springs.<sup>1</sup> The proposed manner of use is for the irrigation of 30 acres and domestic purposes. The proposed place of use is described as being located within portions of the N½ NE¼ and portions of the NE¼ NW¼ of Section 16, portions of the S½ SE¼, and portions of the SE¼ SW¼ of Section 9, T.12N., R.70E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 16, T.12N., R.70E., M.D.B.&M.<sup>2</sup> In the remarks section of the application, the Applicant indicated that the State Engineer should refer to the proof of beneficial use map filed under cancelled Permit 7475.<sup>3</sup>

**II.**

Application 70829 was timely protested by Gondor Ranch, Wheeler Service and Baker Ranches, Inc., on the grounds that they have the rights to use the water of Snake Creek as already issued by the State of Utah and they believe Gruden Spring is tributary to Snake Creek, and therefore, the water is already appropriated.<sup>2</sup>

**FINDINGS OF FACT**

**I.**

The State Engineer has for the course of the last year attempted to resolve Application 70829 and on November 26, 2008, issued State Engineer's Ruling No. 5907,

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<sup>1</sup> The State Engineer notes that in 1925 Application 7475 was filed on this source, but it was identified by Joe Gruden as Gruden Spring and not Gruden Springs. The State Engineer further notes that NRS § 533.335 only allows for the appropriation from one single source in any one application.

<sup>2</sup> File No. 70829, official records in the Office of the State Engineer.

<sup>3</sup> The State Engineer notes there is no proof of beneficial use map for Permit 7475; however, there is a map that accompanied the application.

which overruled the protests and granted the application. The State Engineer finds it is a very rare instance where he will rescind a ruling, but when on his own initiative he believes that perhaps a ruling was issued in error or without sufficient information and analysis, he will rescind the ruling in order to correct a mistake or acquire additional information needed for a full analysis of the issues under consideration. The State Engineer finds that due to the fact that there are very few days left for appealing the ruling and his concern that perhaps the ruling was not based on sufficient or correct information that he must rescind the ruling for further analysis and consideration of the application and protests.

## II.

An important issue to be addressed in the decision on this application is whether or not there is unappropriated water at the source during the time frame requested for appropriation. The application requests use of water from Gruden Spring year round. The Protestants assert that the source is tributary to Snake Creek and for most of the year they have the right to appropriate the water under a decree issued by the Fifth Judicial District Court of the State of Utah, in and for Millard County.<sup>4</sup> The State Engineer finds he will provide the Applicant and Protestant an opportunity to address the issue of whether or not Gruden Spring is tributary to Snake Creek; however, as addressed below, the State Engineer believes the Applicant has a significant burden to attempt to show it is not tributary.

## III.

Gruden Spring is located approximately 250 feet south of Snake Creek and according to a Protestant, approximately 50 feet higher than the creek. The land surface gradient from the spring is towards the creek. Gruden Spring is the larger of two springs in the area and is located on the western edge of the described place of use.<sup>5</sup> The smaller unnamed spring is located southeast and uphill from Gruden Spring.

A letter from the Applicant dated April 30, 2004, alleges that the water from Gruden Spring naturally irrigates an adjacent wet meadow riparian complex and does not flow into Snake Creek, but seeps into the ground. Pictures included with a letter from the Applicant dated December 4, 2007, show pictures of the area before he began digging

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<sup>4</sup> Geroge [sic] W. Gonder, Elsie R. Gonder and Thomas D. Dearden, Jr. v. John Doe (otherwise unknown), In the District Court of the Fifth Judicial District of the State of Utah, in and for the County of Millard.

<sup>5</sup> See, application map, Application 7475, official records in the Office of the State Engineer.

ditches. In May 2002, the pictures show an area with grasses and brush that is distinctively different from the surrounding sagebrush areas. In another letter from the Applicant dated May 19, 2008, he asserts that originally the land below Gruden Spring along Snake Creek was only a marginal seep and large ditches had been dug over the years to try to capture the water. Pictures he has provided the State Engineer show the ditches he has dug have a significant amount of water flowing through them. The State Engineer finds if Gruden Spring was only a marginal seep, the large quantity of water shown in the pictures had to be going somewhere and with the proximity to Snake Creek hydrologic principles would support that the water is tributary to Snake Creek. Information in the file provided by the Applicant indicates the now developed seep called Gruden Spring flows at least an average of 60 gallons per minute, and whether a seep or not the water source is approximately 250 feet from Snake Creek.

Other pictures provided by the Applicant show that in May 2008 above the Duff property Snake Creek is dry below the boundary of Great Basin National Park and ¼ mile below Gruden Spring on the Duff property Snake Creek was flowing 2.1 cfs. The Applicant alleges this is due to the spring rehabilitation.

Protestant Owen Gonder said his family acquired title to the property including Gruden Spring in the 1950s and when his family acquired the property an old ditch fed a meadow of approximately 2 acres and that most of the ground was too wet for even willows to grow and that the water from Gruden Spring flowed into Snake Creek. Mr. Gonder indicates that the smaller spring to the southeast of Gruden Spring also contributed water to the meadow area. Mr. Gonder said that the pond that presently exists was dry when his family acquired the property and the upper smaller spring irrigated 1 row of orchard, but that no additional irrigation system existed at that time on Gruden Spring and the meadow area consisted of brush and grass. Mr. Gonder stated that since the time of his knowledge of the property, Gruden Spring has always run into the creek.

Protestant Baker has indicated that Snake Creek originates at Johnson Lake in Great Basin National Park, goes underground near the west end of Gruden Spring and reappears near the east end of the spring. The United States Geological Survey has indicated that "discharge at small seeps and springs near the contact of the Prospect Mountain Quartzite with the Pioche Shale ...indicates that much of the water in the

quartzite and shale does not leave the Snake Creek drainage as ground-water flow, but rather is discharged back to the creek.”<sup>6</sup>

The State Engineer finds based on the evidence that the ground in the area was saturated and the spring is relatively close to Snake Creek leads the State Engineer towards a finding that the Gruden Spring in its natural state likely subirrigated a meadow area that then discharged water to Snake Creek and is tributary to Snake Creek. However, the State Engineer finds it is reasonable to allow the Applicant the opportunity to provide information on this point.

#### IV.

Letters contained within the file for Application 70829 from the Applicant indicate that Gruden Spring was developed in part and has been in use since 1925 and that the immediate owners prior to him continued to develop and use the spring for the applied for purposes since 1991. The Applicant also asserts that the spring has been in use for irrigation since 1867.

Protestant Craig Baker provided the State Engineer with a copy of the judicial decree that was issued by the district court in Millard County, Utah, and that adjudicated the waters of the Snake Creek. The Decree was issued on May 17, 1910. The Decree indicates that the adjudication was between Geroge [sic?] W. Gondor, Elsie R. Gondor, and Thomas D. Deardon, Jr., as the plaintiffs, v. John Doe (otherwise unknown) as the defendant. This document appears to indicate a belief that there was some other water user on Snake Creek, but shows that no one responded to the summons that was served by publication nor made any claim to the use of the waters of Snake Creek.

The Utah Decree held that “the plaintiffs, their grantors, and predecessors in title and interest, for a period of more than thirty years past,<sup>7</sup> have had the open, uninterrupted, exclusive, use and enjoyment, of all the water of the Creek commonly known as Snake Creek, in Millard County, Utah, and have used the [sic] all of the waters of said creek from March 1<sup>st</sup> until November 15<sup>th</sup>, in each and every year, during the last thirty years, for irrigating lands, and that all of the waters of said creek have been necessary for the use of said plaintiffs for the purposes aforesaid.” The Decree continues with:

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<sup>6</sup> P. Elliott, D. Beck, D. Prudic, *Characterization of Surface-Water Resources in Great Basin National Park and Their Susceptibility to Ground-Water Withdrawals in Adjacent Valleys, White Pine County, Nevada*, United States Geological Survey, Scientific Investigation Report 2006-5009.

<sup>7</sup> 1880-1910.

It is further ordered, adjudged and decreed, that the said Snake Creek, is a natural stream of water, which contains a volume varying from 6 cubic feet per second of time to [illegible] cubic feet per second of time, which raises in the mountains commonly called the Snake Range, in the vicinity of Jeff Davis peak, in the State of Nevada, and flows in an Easterly direction in a natural and well defined channel into Millard County, Utah, and there applied by plaintiffs to irrigate about 620 acres of land, which in its natural state is arid and unproductive, but when irrigated produces abundant crops of grain, alfalfa, and other farm products.

It is further ordered, adjudged and decreed, that the defendant, John Dor [sic], whose true name is unknown, has no right, title or interest, in or to the use of any of the waters of Snake Creek for irrigation purposes, from March 1<sup>st</sup> through November 15<sup>th</sup>, in each and every year.

It is further ordered, adjudged and decreed that the plaintiffs are the exclusive owners of the right to the uses of all the waters of said Snake Creek for irrigation purposes from March 1<sup>st</sup> until November 15<sup>th</sup> in each and every year and all adverse claims to the right to the use of any of the waters said creek during the period of time above specified, are hereby adjudged null and void.

The State Engineer finds based on the Decree alone there is substantial evidence there is unappropriated water from November 16<sup>th</sup> through the end of February. However, Application 70829 was filed for year-round use. The State Engineer finds the current evidence in the record supports a finding that any claim of an 1867 pre-statutory vested right was abandoned as no claim was recognized in the Decree.

#### V.

The Applicant asserts that not only was the water used in 1867, but also in 1925 and has been used since 1991. Application 7475 was filed on August 10, 1925, in the Office of the Nevada State Engineer. This application was filed by Joe Gruden to appropriate 0.8795 cfs of water from Gruden Spring for the irrigation of 87.95 acres and for domestic purposes. In the remarks section of Application 7475, Joe Gruden indicated that he developed the spring and made it flow where no water flowed before and that he had already placed 8 to 10 acres under cultivation. Application 7475 was granted on June 27, 1926. The Affidavit of Labor and Improvements filed on July 24, 1927, with the Nevada State Engineer indicates that the improvements consisted of an open cut approximately 500 feet long by three feet wide and running from two feet deep at the lower end to six feet deep at the upper end. This large cut was supplemented by numerous smaller cuts, all of which extend into what was formerly a seep which was entirely dry on the surface during certain periods of the year.

In 1939 the Nevada State Engineer sent Joe Gruden notice that he had not filed the required Proof of Completion of Work and Proof of Application of Water to Beneficial Use as were required under the terms of his permit. Mr. Gruden replied indicating that he had spent money on work to open up the water, but that it went dry and had stopped flowing for the last 10 years, but had started flowing again that spring. The State Engineer finds this evidence indicates that from 1926 through 1929 Gruden Spring flowed water after Joe Gruden developed the source, but for more than a decade the spring was dry indicating that Gruden Spring was not flowing over the surface to Snake Creek during that time period. Permit 7475 was cancelled by the Nevada State Engineer on April 6, 1942, for failure to comply with the provisions of the permit.

The State Engineer finds when Permit 7475 was issued in 1926 there is no information in the permit file that indicates the State Engineer was aware of decreed water rights on the source. The State Engineer finds the issue of earlier development does not change the fact that decreed water right holders have now raised the issue of potential interference with existing rights.

## VI.

A formal field investigation to address the application and related protests was held by personnel with the Office of the State Engineer on May 19, 2008. In attendance from the Nevada Division of Water Resources were Ken Haffey (Staff Engineer), Richard Perry (Staff Engineer) and Danny Zampirro (Engineering Technician III). Also in attendance were Scott Miller (Nevada Department of Wildlife), Don Duff (Applicant), Buck Douglas (Applicant's associate), Owen Gondor (Protestant), Chris Wheeler (Protestant), Darwin Wheeler (Protestant), Dean Baker, Tom Baker and Craig Baker (Protestants), and Robin Crouch (Hidden Valley resident).

The investigation began with the Applicant outlining the scope of the project, which includes establishing a native riparian habitat on the place of use. The Applicant has cleared approximately 25 acres of existing sage brush and has planted range grasses to establish a riparian habitat. During the field investigation, the Applicant indicated that the land is currently being irrigated by using the water from Gruden Spring and that a previous user of the spring named Emerson had installed a pipeline along the south side of the spring to irrigate the north portion of the meadow. The Applicant indicated that he has reworked the system of ditches around the spring to extend the existing flow to the

meadow and to more fully irrigate the meadow to the north.<sup>8</sup> The Applicant indicated that he has improved the efficiency of the existing ditch by making a smaller channel to reduce infiltration and seepage. The Applicant asserts that the native grasses he has planted in place of the sagebrush that he removed will use less water than the phreatophytes, but there is insufficient evidence in this record to support that allegation. Protestant Baker asserts that the native grasses will use more water than the phreatophytes, but again there is insufficient evidence in this record to support that allegation. However, the State Engineer believes it will not be difficult to show that irrigation of grasses is going to use more water than the subirrigation of brush and grassland.

During the field investigation, Protestant Owen Gonder was believed to have said that his family acquired title to the property including Gruden Spring in the 1950s. Staff from the Office of the State Engineer believed he indicated that when his family acquired the property that an old ditch fed a meadow of approximately 2 acres and that most of the ground was too wet for even willows to grow and that the spring did not flow into Snake Creek. The Report of Field Investigation indicates that Mr. Gonder said that a second spring to the south of Gruden Spring also contributed water to the meadow area. Mr. Gonder said that the pond that presently exists was dry when his family acquired the property and the spring irrigated 1 row of orchard, but that no additional irrigation system existed at that time on Gruden Spring and the meadow area consisted of brush and grass. Since the time of the field investigation, Mr. Gonder has indicated that the information in the Report of Field Investigation is the opposite of what he actually said during the investigation. Mr. Gonder indicates that during the field investigation he showed those present where the water flowed from the spring to the creek. Mr. Gonder says there are two springs: the upper spring to the south is the smaller of the two and was used to water the orchard. The lower spring, the larger of the two he contends has always run into the creek. The State Engineer finds the evidence that the ground in the area was saturated and the spring is relatively close to Snake Creek leads the State Engineer towards a finding that the Gruden Spring in its natural state likely subirrigated a meadow area that discharged water to Snake Creek and is therefore tributary to Snake Creek. If the Applicant is merely attempting to recreate the meadow area to more closely resemble the

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<sup>8</sup> Report of Field Investigation No. 1100, dated August 5, 2008, official records in the Office of the State Engineer.

natural area that likely existed in 1910, the State Engineer has difficulty understanding the Protestants complaints; however, with the irrigation proposed under the Application, the meadow area appears much larger than the area might be naturally and would therefore be using more water. The State Engineer finds based on his knowledge and experience that the evidence currently in the record supports a finding that in 1910 the area was a small subirrigated meadow along Snake Creek and Gruden Spring was likely tributary to Snake Creek in its natural condition.

**VII.**

The evidence in the record of the Nevada State Engineer indicates that the Applicant Donald Duff makes contradictory allegations as to whether or not the water of Gruden Spring is tributary to Snake Creek. In one instance, he asserts that the spring does not flow into Snake Creek, but rather naturally irrigates the adjacent wet, riparian meadow complex (subirrigates a meadow system), and in another instance, asserts that the irrigation of the riparian meadow provides recharge to Snake Creek, which means the water from the spring does reach the creek. The Applicant asserts that the further development of the meadow complex would not constitute a risk to the downstream users; however, the State Engineer finds there is inadequate evidence to support that allegation in the current record.

**VIII.**

Information in the file indicates that the Applicant has proceeded with use of the water without the benefit of a legal right to use water as the application had not been granted.<sup>9</sup> The State Engineer finds it is a violation of Nevada Water Law to use these waters without a permit. Other information provided by the Applicant indicates there has been other unlawful use of the water. The Applicant is to cease and desist any unlawful use of the water immediately.

**IX.**

The State Engineer finds if the water of Gruden Spring is tributary to Snake Creek, and if the 620 acres with decreed water rights are still under cultivation, there is no unappropriated water to support the application during the irrigation season. However, there is unappropriated water in the system from November 16<sup>th</sup> through the end of February. The State Engineer finds he will provide the Applicant and Protestants time to provide additional scientific evidence to support a claim that the water from

<sup>9</sup> Letter dated December 4, 2007, File No. 70829, official records in the Office of the State Engineer.

Gruden Spring is or is not tributary to Snake Creek. The State Engineer finds based on his expertise and knowledge that it is more likely than not the water of Gruden Spring is tributary to Snake Creek. The State Engineer finds there is insufficient information in this record to know whether or not all 620 acres with decreed water rights are still being irrigated.

**X.**

The State Engineer is hesitant to believe at this time that developing the area around Gruden Spring to a riparian habitat will not interfere with existing rights as they were decreed in 1910. However, the quantity that would actually be consumed on the 30 acres would be small and likely unmeasurable downstream. Therefore, the State Engineer would hope that the Protestants might find a way to come to some compromise with the Applicant as to the planned water development as it is likely that subirrigated meadows would support additional stream flow later in the irrigation season. The State Engineer finds before ruling on Application 70829 and the related protests he is going to provide the parties an opportunity to discuss settlement of the protests and the opportunity to provide additional information in support of the application and protests.

The State Engineer finds that the parties are hereby provided with an additional opportunity to supplement the record with hydrogeologic evidence as to whether or not Gruden Spring is tributary to Snake Creek. The State Engineer finds the parties are not required to provide this evidence, but merely are being provided an additional opportunity to provide evidence.

The Applicant repeatedly indicates that the water from the spring seeps into a meadow system that recharges water to the creek and that the work he has performed (notably without the benefit of a water right) has increased the flow of Snake Creek. The Applicant has provided pictures that indicate the flow of Snake Creek to be between 2.1 cfs to 4.1 cfs. The State Engineer finds this flow is significantly less than that identified in the Snake Creek Decree. However, the Applicant continues to assert the flow in Snake Creek is being increased. The State Engineer finds the Applicant has not provided proof satisfactory to support his allegation that by developing Gruden Spring any more water reaches Snake Creek than would have reached it had the spring water remained underground.

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## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>10</sup>

### II.

The State Engineer is prohibited by law from granting a permit to appropriate public waters where:<sup>11</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.

The State Engineer concludes there is unappropriated water at least from November 16<sup>th</sup> through the end of February.

The State Engineer concludes it is more likely than not that the flow of Gruden Spring is tributary to Snake Creek, but he will allow additional time for the Applicant and Protestants to provide information or an expert opinion on that question. The State Engineer concludes if the flow of Gruden Spring is tributary to Snake Creek, the water was fully appropriated during the irrigation season. The State Engineer concludes there is inadequate information in the record to determine if all the land with decreed water rights is still under irrigation.

The State Engineer concludes there is inadequate information in the record to support that the Applicant's claim that his proposed use of the water will increase the flow in Snake Creek. The State Engineer concludes there is inadequate information to support the Applicant's assertion that the use of water by native grasses will be less than that by phreatophytes or to support the Protestants assertion that more water will be used.

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<sup>10</sup> NRS chapters 533.

<sup>11</sup> NRS § 533.370(5).

**RULING**

The State Engineer hereby rescinds State Engineer's Ruling No. 5907. The Applicant and Protestants have 120 days from the date of this ruling to provide the State Engineer with additional evidence to support their application or protests. The Applicant and Protestants are to concurrently serve each other with this evidence when it is filed with the Office of the State Engineer. The Applicant and Protestants are not required to file any additional information, but are merely being provided the opportunity to supplement the record.

The State Engineer encourages the parties to work towards settlement of the protests and inform the State Engineer as to any progress towards settlement. The State Engineer orders the Applicant to cease and desist the use of any water from Gruden Spring as it is not authorized by a permit issued by the Nevada State Engineer.

Respectfully submitted,



JASON KING, P.E.  
Deputy State Engineer

JK/SJT/jm

Dated this 19<sup>th</sup> day of  
December, 2008.

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

IN THE MATTER OF APPLICATION 70829 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF GRUDEN SPRINGS WITHIN )  
THE SNAKE VALLEY HYDROGRAPHIC )  
BASIN (195), WHITE PINE COUNTY, )  
NEVADA. )

**RULING**

**# 5907**

**GENERAL**

**I.**

Application 70829 was filed on January 20, 2004, by Donald A. Duff, Snake Creek Ranch to appropriate 0.4 cubic feet per second (cfs) of water from Gruden Springs. The proposed manner of use is for irrigation and domestic purposes. The proposed place of use is described as being located within portions of the N $\frac{1}{2}$  NE $\frac{1}{4}$ , and portions of the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 16, portions of the S $\frac{1}{2}$  SE $\frac{1}{4}$ , and portions of the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.12N., R.70E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 16, T.12N., R.70E., M.D.B.&M.<sup>1</sup>

**II.**

Application 70829 was timely protested on March 18, 2004, by Gondor Ranch, Wheeler Service and Baker Ranches, Inc. on the grounds that water rights have been issued on Snake Creek by Utah and the Protestants believe that Gruden Springs is tributary to Snake Creek.

**FINDINGS OF FACT**

**I.**

Application 7475 was filed on August 10, 1925, by Joe Gruden to appropriate 0.8795 cfs of water for the irrigation of 87.95 acres from Gruden Springs. The proposed manner of use is for irrigation and domestic purposes. The proposed place of use is within portions of Sections 9 and 16, T.12N., R.70E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 16, T.12N., R.70E., M.D.B.&M. Application 7475 was approved on June 27, 1926, for 0.8975 cfs and a review of the file shows the Permittee wrote to the State Engineer and stated

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<sup>1</sup> File No. 70829, official records in the Office of the State Engineer.

Gruden Springs had gone dry for the last ten years. Subsequently, the Permittee failed to file an extension of time as required in the terms of the permit and Permit 7475 was cancelled by the State Engineer on April 6, 1942, for failure to comply with the provisions of the permit.<sup>2</sup>

The State Engineer finds Application 70829 seeks to re-establish a water right permit on the waters of Gruden Springs and with the cancellation of Permit 7475, water is available at the source.

## II.

A formal field investigation was held by personnel of the Office of the State Engineer at 11:00 a.m. on May 19, 2008. In attendance were as follows:

Ken Haffey, Staff Engineer, Nevada Division of Water Resources  
Richard Perry, Staff Engineer, Nevada Division of Water Resources  
Danny Zampirro, Engineering Technician III, Nevada Division of Water Resources  
Scott Miller, Nevada Department of Wildlife  
Don Duff, Snake Creek Ranch, Applicant  
Buck Douglas, Applicant's associate  
Owen Gondor, protestant and rancher  
Chris Wheeler, protestant and rancher  
Darwin Wheeler, protestant and rancher  
Dean Baker, protestant and rancher  
Tom Baker, protestant and rancher  
Craig Baker, protestant and rancher  
Robin Crouch, Hidden Valley resident

The investigation began with the Applicant outlining the scope of the project, which includes establishing a native riparian habitat on the place of use. The Applicant has cleared approximately 25 acres of existing sage brush and has planted range grasses to establish a riparian habitat. The Applicant has reworked the system of ditches around the spring to extend the existing flow to the meadow.<sup>3</sup>

Protestant Baker presented a copy of the Snake Creek decree, which was adjudicated in the State of Utah on May 17, 1910, between Geroge W. Gondor, Elsie R. Gondor, and Thomas D. Deardon, Jr., Plaintiffs, v. John Doe. (otherwise unknown) Defendant. The Utah decree awarded "the plaintiffs herein are the exclusive owners of

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<sup>2</sup> File No. 7475, official records in the Office of the State Engineer.

<sup>3</sup> Report of Field Investigation No. 1100, dated August 5, 2008, official records in the Office of the State Engineer.

the right to the uses of all the waters of said Snake Creek for irrigation purposes from March 1<sup>st</sup> until November 15<sup>th</sup> in each and every year.”<sup>3</sup>

Protestant Gondor gave a historical review of the area stating he was familiar with the area for about 60 years. At various times the area has been primarily used for grazing stock. He did state that to his knowledge Gruden Springs did not flow into Snake Creek on the surface.<sup>3</sup>

The State Engineer finds that Gruden Springs historically did not flow into Snake Creek and water from the spring can be appropriated in the manner sought by the Applicant.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>4</sup>

#### II.

The State Engineer is prohibited by law from granting a permit to appropriate public waters where:<sup>5</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.

The State Engineer concludes that with the cancellation of Permit 7475, there is unappropriated water at the source and there are no other existing water rights on Gruden Springs.

#### IV.

The Applicant’s goal is to establish a meadow of range grasses, riparian vegetation and to enhance wildlife habitat. The Applicant has no desire to produce a harvest crop or graze livestock. The State Engineer concludes that the use of water as

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<sup>4</sup> NRS chapters 533.

<sup>5</sup> NRS § 533.370(5).

proposed under Application 70829 will not threaten to prove detrimental to the public interest.

V.

The State Engineer concludes that the Protestants' concerns regarding Snake Creek are unfounded as the evidence indicates no historic surface flow from Gruden Springs into Snake Creek.

**RULING**

The protests to Application 70829 are hereby overruled and Application 70829 is granted subject to existing rights and payment of statutory fees.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/KMH/jm

Dated this 26th day of  
November, 2008.