

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

IN THE MATTER OF APPLICATION 42759 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF THE STATE OF NEVADA FROM )  
TROUT CREEK WITHIN THE STARR VALLEY )  
AREA HYDROGRAPHIC BASIN (043), )  
ELKO COUNTY, NEVADA. )

RULING

# 4725

GENERAL

I.

Application 42759 was filed on November 3, 1980, by, Marshall L. Morgan to appropriate 7.0 cubic feet per second (cfs) (non-consumptive) of water from Trout Creek for power generation purposes within the SW $\frac{1}{4}$  of Section 5; E $\frac{1}{2}$ , E $\frac{1}{2}$  W $\frac{1}{2}$  of Section 6; E $\frac{1}{2}$  of Section 7; W $\frac{1}{2}$ , W $\frac{1}{2}$  NE $\frac{1}{4}$ , and portions of the SE $\frac{1}{4}$  of Section 8, all in T.37N., R.61E., M.D.B.&M.; and also that portion of the S $\frac{1}{2}$  S $\frac{1}{2}$  of Section 31, T.38N., R.61E., M.D.B.&M., lying south of the railroad right-of-way. The point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 21, T.37N., R.61E., M.D.B.&M.<sup>1</sup>

II.

Application 42759 was timely protested by the Wells Rural Electric Company on the grounds that "the protestant has a valid permitted existing water right issued in 1924 to utilize 5.3 second feet of the surface waters from Trout Creek at a point approximately 700 feet downstream from the applicant's proposed point of diversion. Granting the application will adversely affect the present water rights of protestant".<sup>1</sup>

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<sup>1</sup> File No. 42759, official records in the office of the State Engineer.

III.

By letter dated September 18, 1981, Mr. James M. Copenhaver of Vaughan, Hull & Copenhaver, Ltd., Attorneys and Counselors, on behalf of Wells Rural Electric Company states that "it has been determined by Wells Rural Electric Company that Mr. Morgan's proposed point of diversion is approximately 285 feet downstream from the existing water right issued to Wells Rural Electric Company. Therefore, granting of the application in all likelihood will not adversely affect the present water rights of the protestant, Wells Rural Electric Company." The letter further provides that "it is very doubtful that Trout Creek ever contained 7.0 second feet of water other than for very short increments in the late spring or very early summer months." However, Mr. Copenhaver did not withdraw the protest so as to insure that adequate restrictions are imposed and that Mr. Morgan's non-consumptive use would not interfere with Wells Rural Electric Company's existing water rights.<sup>1</sup>

IV.

The State Engineer's Office received deeds transferring ownership of Application 42759 from Marshall L. Morgan to Frank W. and Phyliss A. Hooper and from Frank W. and Phyliss A. Hooper to Mark M., Scott L., Jennifer A., Kirk F. and Lili A. Hooper on April 22, 1992, and an assignment was done reflecting this change of ownership.<sup>2</sup>

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<sup>2</sup> File No. 30974, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

Wells Rural Electric Company has a certificated water right, Permit 7058 Certificate 2132, from Trout Creek for 5.3 for power generation. The point of diversion of Permit 7058 is approximately 300 feet upstream from the proposed point of diversion of Application 42759. The flow of Permit 7058 is returned to the natural stream channel 4800 feet below the point of diversion. The proposed return flow for Application 42759 is 4000 feet below its proposed point of diversion.

The State Engineer finds that allowing an additional 7.0 cfs of water to be diverted from Trout Creek anywhere between Wells Rural Electric Company's point of diversion and its discharge point back to Trout Creek would reduce the flow of Trout Creek to a degree which would cause irreversible damage to the flora and fauna within that segment of the natural stream channel.

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>

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

<sup>4</sup> NRS § 533.370(3).

- 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.

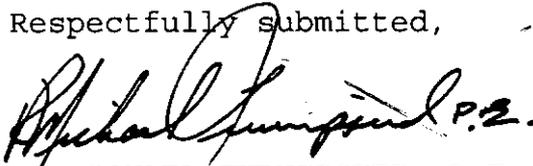
**III.**

The State Engineer concludes that any further diversions of water on that segment of Trout Creek between the point of diversion and the point of return flow of Permit 7058 would have a detrimental effect on the flora and fauna, which would prove to be detrimental to the public interest.

**RULING**

Application 42759 is hereby denied on the grounds that to approve any additional diversions from Trout Creek would prove to be detrimental to the public interest.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJB/cl

Dated this 14th day of  
April, 1999.