

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

IN THE MATTER OF APPLICATION )  
70421 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF AN UNNAMED )  
SPRING LOCATED WITHIN THE SMITH )  
VALLEY HYDROGRAPHIC BASIN (107), )  
LYON COUNTY, NEVADA. )

**RULING**

**#5435**

**GENERAL**

**I.**

Application 70421 was filed on September 19, 2003, by Kenneth D. Gardner, Jr. and Dorothy Rowe Gardner to appropriate 1.0 cubic foot per second of water from an unnamed spring for irrigation and domestic purposes within 80.74 acres of land, which are described as being located within the W $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 21, T.12N., R.23E., M.B.D.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 21, T.12N., R.23E., M.D.B.&M. Information contained within Item No. 8 of the application indicates that it is the applicants' intention to collect water from a series of seeps and springs located on their property.<sup>1</sup>

**II.**

For the purposes of this ruling, the term, "spring area" refers to several springs and seeps located within the applicants' property whose surface flows are to be collected by an adjacent ditch.

**FINDINGS OF FACT**

**I.**

A water right application, which requests a new appropriation of water from a surface source for irrigation purposes, typically requires an informal field investigation at its proposed point of diversion and associated place of use. The purpose of the onsite inspection is to collect field

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<sup>1</sup> File No. 70421, official records in the office of the State Engineer.

data that will assist the State Engineer in considering the application. Guidance in this consideration is provided by the Nevada Revised Statutes (NRS) under NRS § 533.370, which requires, in part, that a water right application can only be approved if it is determined that sufficient unappropriated water exists at the source and that its approval would not conflict with existing water rights that appropriate water from the source. The State Engineer finds that a field investigation in the matter of Application 70421 was required to determine its compliance with NRS § 533.370 and the supporting policies of the Office of the State Engineer.

## II.

Subsequently an informal field investigation in this matter was conducted on May 27, 2004, by representatives of the Office of the State Engineer. The findings of this inspection are presented within Report of Field Investigation No. 1053, a copy of which has been incorporated into the record maintained under Application 70421. This report states that, "The spring source of Application 70421 is a continuous seep on a saturated marshy hillside of approximately 300 feet in length with the seep water contributory to other water slowly flowing north in a drain ditch." The portion of the ditch water, which interests the applicants, is that amount contributed by the spring area as the ditch traverses their property. Employing standard field techniques, it was determined that the flow of the ditch immediately upstream from the spring area is slightly greater than the flow that exits the area.<sup>2</sup> The portion of the ditch between the two measuring points would be, by definition a losing stretch, in that there is a loss of flow from the ditch into the adjacent ground. Under this scenario, the applicants' plan would fail, since it incorrectly assumes that this segment of the ditch is a gaining stretch, where an increase in ditch flow would be expected as water is received from the spring area. The State

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<sup>2</sup> Report of Field Investigation No. 1053, official records within the Office of the State Engineer.

Engineer finds that there is no portion of the water contained within the ditch that can be credited to surface flow derived from the spring area.

**III.**

Report of Field Investigation No. 1053 identifies an existing certificated water right, Permit 29074, Certificate 9380 as being approximately 150 feet north of the proposed point of diversion described under Application 70421. This location would place the existing point of diversion under Permit 29074, Certificate 9380 down stream from the point of diversion proposed under Application 70421. It has already been determined that there is no unappropriated water available for capture under the subject application, which limits any new appropriation from the ditch to water already claimed under Permit 29074, Certificate 9380. The State Engineer finds that the approval of Application 70421 would conflict with at least one existing water right, which appropriates water from the same ditch.

**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.

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

<sup>4</sup> NRS § 533.370(4).

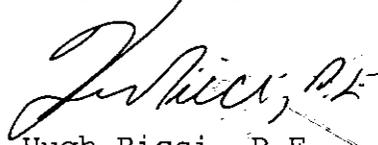
**III.**

The applicants' plan to collect and utilize the waters that emerge from a spring area located within their property, does not take into consideration the flow conditions, which are found at the site. For a variety of reasons, the segment of the ditch adjacent to the subject springs and seeps is a losing stretch, which carries water already appropriated under senior surface rights. The State Engineer concludes that the lack of unappropriated water at the source and the potential conflict with existing water rights within the system qualifies Application 70421 for denial under the provisions set forth under NRS § 533.370.

**RULING**

Application 70421 is hereby denied on the grounds that there is no unappropriated water available at the source and that its approval would conflict with existing water rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,

  
Hugh Ricci, P.E.  
State Engineer

HR/MDB/jm

Dated this 22nd day of  
October 2004.