

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

IN THE MATTER OF APPLICATIONS 71269, )  
71270, 71271, 71272, 71273, 71274, 71275, )  
71276, 71277, 71529, 71530, 71531, 71532 AND )  
71533 FILED TO APPROPRIATE THE WATER )  
FROM VARIOUS SPRINGS AND STREAMS )  
WITHIN THE WARM SPRINGS VALLEY )  
HYDROGRAPHIC BASIN (084), WASHOE )  
COUNTY, NEVADA. )

**RULING**

**#5505**

**GENERAL**

**I.**

Application 71269 was filed on June 3, 2004, by Randy Venturacci to appropriate the waters of Winnemucca Springs No.1, tributary to Warm Springs Valley Creek. The amount of water applied for is 5.0 cubic feet per second (cfs) for the irrigation of 365.58 acres and domestic purposes. The proposed place of use is described as being located within SW $\frac{1}{4}$  NE $\frac{1}{4}$ , S $\frac{1}{2}$  SE $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$ , E $\frac{1}{2}$  SW $\frac{1}{4}$  and SE $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 12; N $\frac{1}{2}$ , SE $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$  and N $\frac{1}{2}$  SE  $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 13; NE $\frac{1}{4}$  NE $\frac{1}{4}$ , S $\frac{1}{2}$  NE $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$  and SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14; NE $\frac{1}{4}$  NW $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NE $\frac{1}{4}$  and N $\frac{1}{2}$  SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 24, all within T.24N., R.19E., M.D.B.&M.; NE $\frac{1}{4}$  SW $\frac{1}{4}$  and S $\frac{1}{2}$  SW $\frac{1}{4}$ , of Section 7; N $\frac{1}{2}$  SW $\frac{1}{4}$ , NW $\frac{1}{4}$  NW $\frac{1}{4}$  and S $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 17; NW $\frac{1}{4}$  NE $\frac{1}{4}$ , S $\frac{1}{2}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  and W $\frac{1}{2}$  of Section 18; E $\frac{1}{2}$  SW $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$  and NW $\frac{1}{4}$  of Section 19, all within T.24N., R.20E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 12, T.24N., R.19E., M.D.B.&M.<sup>1</sup>

**II.**

Application 71270 was filed on June 3, 2004, by Randy Venturacci to appropriate the waters of Unnamed Spring No. 2, tributary to Warm Springs Valley Creek. The amount of water applied for is 5.0 cfs for the irrigation of 365.58 acres and domestic purposes. The place of use is as described under Application 71269. The point of diversion is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, T.24N., R.20E., M.D.B.&M.<sup>2</sup>

<sup>1</sup> File No. 71269, official records within the Office of the State Engineer.

<sup>2</sup> File No. 71270, official records within the Office of the State Engineer.

### III.

Application 71271 was filed on June 3, 2004, by Randy Venturacci to appropriate the waters of Whiskey and Lorrie Canyons Reservoir No. 3, tributary to Warm Springs Valley Creek. The amount of water applied for is 5.0 cfs for the irrigation of 365.58 acres and domestic purposes. The place of use is as described under Application 71269. The point of diversion is described as being located within the NE¼ NE¼ of Section 14, T.24N., R.19E., M.D.B.&M.<sup>3</sup>

### IV.

Application 71272 was filed on June 3, 2004, by Randy Venturacci to appropriate the waters of McKissick Creek No. 5, tributary to Warm Springs Valley Creek. The amount of water applied for is 5.0 cfs for the irrigation of 365.58 acres and domestic purposes. The place of use is as described under Application 71269. The point of diversion is described as being located within the SW¼ NE¼ of Section 14, T.24N., R.19E., M.D.B.&M.<sup>4</sup>

### V.

Application 71273 was filed on June 3, 2004, by Randy Venturacci to appropriate the waters of Warm Springs Valley Creek and Tributaries No. 7. The amount of water applied for is 5.0 cfs for the irrigation of 365.58 acres and domestic purposes. The place of use is as described under Application 71269. The point of diversion is described as being located within the SW¼ NW¼ of Section 13, T.24N., R.19E., M.D.B.&M.<sup>5</sup>

### VI.

Application 71274 was filed on June 3, 2004, by Randy Venturacci to appropriate the waters of Warm Springs Valley Creek and Tributaries No. 20. The amount of water applied for is 5.0 cfs for the irrigation of 365.58 acres and domestic purposes. The place of use is as described under Application 71269. The point of diversion is described as being located within the NE¼ SW¼ of Section 19, T.24N., R.20E., M.D.B.&M.<sup>6</sup>

### VII.

Application 71275 was filed on June 3, 2004, by Randy Venturacci to appropriate the waters of Unnamed Springs No. 24, tributary to Warm Springs Valley Creek. The amount of water applied for is 5.0 cfs for the irrigation of 365.58 acres and domestic purposes. The place

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<sup>3</sup> File No. 71271, official records within the Office of the State Engineer.

<sup>4</sup> File No. 71272, official records within the Office of the State Engineer.

<sup>5</sup> File No. 71273, official records within the Office of the State Engineer.

<sup>6</sup> File No. 71274, official records within the Office of the State Engineer.

of use is as described under Application 71269. The point of diversion is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 19, T.24N., R.20E., M.D.B.&M.<sup>7</sup>

#### VIII.

Application 71276 was filed on June 3, 2004, by Randy Venturacci to appropriate the waters of Unnamed Springs No. 25, tributary to Warm Springs Valley Creek. The amount of water applied for is 5.0 cfs for the irrigation of 365.58 acres and domestic purposes. The place of use is as described under Application 71269. The point of diversion is described as being located within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.24N., R.20E., M.D.B.&M.<sup>8</sup>

#### IX.

Application 71277 was filed on June 3, 2004, by Randy Venturacci to appropriate the waters of Unnamed Springs No. 26, tributary to Warm Springs Valley Creek. The amount of water applied for is 5.0 cfs for the irrigation of 365.58 acres and domestic purposes. The place of use is as described under Application 71269. The point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 18, T.24N., R.20E., M.D.B.&M.<sup>9</sup>

#### X.

Application 71529 was filed on August 3, 2004, by Washoe County to appropriate the waters of Winnemucca Springs. The amount of water applied for is 5.0 cfs for municipal purposes. The proposed place of use is described as being located within Sections 5 and 6, T.16N., R.20E., M.D.B.&M.; all of T.17N., R.19E., M.D.B.&M.; all of T.17N., R.20E., M.D.B.&M.; all of Sections 1 through 5, 8 through 17, 20 through 29, 32 through 36 and the E $\frac{1}{2}$  of Sections 6 and 7, the E $\frac{1}{2}$  of Sections 18 and 19, the E $\frac{1}{2}$  of Sections 30 and 31, of T.18N., R.18E., M.D.B.&M.; all of T.18N., R.19E., M.D.B.&M.; all of Sections 2 through 35 T.18N., R.20E., M.D.B.&M. and the W $\frac{1}{2}$  of Section 36 of T.18N., R.20E., M.D.B.&M.; all of Sections 1 through 5, 8 through 17, 20 through 29, 32 through 36, the E $\frac{1}{2}$  of Sections 6 and 7, the E $\frac{1}{2}$  of Sections 18 and 19 and the E $\frac{1}{2}$  of Sections 30 and 31, T. 19N., R.18E., M.D.B.&M.; all of T.19N., R.19E., M.D.B.&M.; Sections 1 through 12, 14 through 23 and 26 through 35, of T.19N., R. 20E., M.D.B.&M.; and Sections 1 through 5, Sections 8 through 17, Sections 20 through 29, Sections 32 through 36, the E $\frac{1}{2}$  of Sections 6 and 7, the E $\frac{1}{2}$  of Sections 18 and 19 and the E $\frac{1}{2}$  of Sections 30 and 31, T. 20N., R.18E., M.D.B.&M.; all of T.20N., R.19E.,

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<sup>7</sup> File No. 71275, official records within the Office of the State Engineer.

<sup>8</sup> File No. 71276, official records within the Office of the State Engineer.

<sup>9</sup> File No. 71277, official records within the Office of the State Engineer.

M.D.B.&M.; all of T.20N., R.20E., M.D.B.&M.; all of T.20N., R.21E., M.D.B.&M.; Sections 1 through 5, the E½ of Sections 6 and 7, Sections 8 through 17, the E½ of Sections 18 and 19, Sections 20 through 29, the E½ of Sections 30 and 31, and Sections 32 through 36, T.21N., R.18E., M.D.B.&M.; all of T.21N., R.19E., M.D.B.&M.; all of T.21N., R.20E., M.D.B.&M.; all of T.21N., R.21E., M.D.B.&M.; all of T.21N., R.22E., M.D.B.&M.; all of T.22N., R.20E., M.D.B.&M.; all of T.22N., R.21E., M.D.B.&M.; Sections 3 through 10, 15 through 23, 26 through 35 and portions of Sections 2, 11, and 14, T.22N., R.22E., M.D.B.&M.; all of T.23N., R.20E., M.D.B.&M.; Sections 5 through 9, 15 through 23, 25 through 36 and portions of 3, 4, 10, 11, 13, 14 and 24, T.23N., R.21E., M.D.B.&M.; Sections 1 through 4, 9 through 16, 21 through 28 and 33 through 36, T.24N., R.19E., M.D.B.&M.; Sections 2 through 11 and 14 through 36 and portions of Sections 12 and 13, T.24N., R.20E., M.D.B.&M.; and Sections 30 through 32 and portions of Sections 18, 19, 20, 28, 29 and 33, T.24N., R.21E., M.D.B.&M. The point of diversion is described as being located within the SW¼ NE¼ of Section 12, T.24N., R.19E., M.D.B.&M.<sup>10</sup>

#### XI.

Application 71530 was filed on August 3, 2004, by Washoe County to appropriate the waters of Sugar Cane Springs. The amount of water applied for is 5.0 cfs for municipal purposes. The place of use is the same as described under Application 71529. The point of diversion is described as being located within the NW¼ NE¼ of Section 13, T.24N., R.19E., M.D.B.&M.<sup>11</sup>

#### XII.

Application 71531 was filed on August 3, 2004, by Washoe County to appropriate the waters of Unnamed Springs. The amount of water applied for is 5.0 cfs for municipal purposes. The place of use is the same as described under Application 71529. The point of diversion is described as being located within the NE¼ SW¼ of Section 7, T.24N., R.20E., M.D.B.&M.<sup>12</sup>

#### XIII.

Application 71532 was filed on August 3, 2004, by Washoe County to appropriate the waters of Unnamed Springs. The amount of water applied for is 5.0 cfs for municipal purposes.

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<sup>10</sup> File No. 71529, official records within the Office of the State Engineer.

<sup>11</sup> File No. 71530, official records within the Office of the State Engineer.

<sup>12</sup> File No. 71531, official records within the Office of the State Engineer.

The place of use is the same as described under Application 71529. The point of diversion is described as being located within the NE¼ NE¼ of Section 13, T.24N., R.19E., M.D.B.&M.<sup>13</sup>

#### **XIV.**

Application 71533 was filed on August 3, 2004, by Washoe County to appropriate the waters of Unnamed Springs. The amount of water applied for is 5.0 cfs for municipal purposes. The place of use is the same as described under Application 71529. The point of diversion is described as being located within the SW¼ SE¼ of Section 12, T.24N., R.19E., M.D.B.&M.<sup>14</sup>

#### **XV.**

Robert W. and Nanette Marshall timely protested Applications 71269 through 71277 on the grounds that Warm Springs Valley Creek and its tributaries are fully appropriated. The protest goes on to state that the applications as filed are for the non-consumptive use portion of the Marshall water rights that were changed under Applications 64073 through 64079.<sup>1-9</sup>

The Protestants request that the State Engineer deny Applications 71269 through 71277.

### **FINDINGS OF FACT**

#### **I.**

The State Engineer finds that the waters of Warm Springs Valley Creek and its tributaries were adjudicated before the Second Judicial District Court of the State of Nevada in and for the County of Washoe. A final decree was issued on March 20, 1988. Contained within the final decree is a statement that declares the system to be fully appropriated under existing decreed and permitted water rights.<sup>15</sup> This declaration of full appropriation leaves no unappropriated water in the Warm Springs Valley Creek system to satisfy subsequent requests for water. Based on the findings in the Warm Springs Valley Creek Decree the State Engineer finds that no additional appropriations of surface water can be considered from the Warm Springs Valley Creek system.

#### **II.**

All but two sources described under the subject applications can, by means of their descriptions, be matched with water found in the Warm Springs Valley Creek Decree. As previously stated in the above finding, these sources are fully appropriated. The two remaining

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<sup>13</sup> File No. 71532, official records within the Office of the State Engineer.

<sup>14</sup> File No. 71533, official records within the Office of the State Engineer.

<sup>15</sup> "In the Matter of the Determination of the Relative Rights in and to the Waters of Warm Spring Valley Creek (a.k.a. Winnemucca Valley Creek a.k.a. Isaac Mathews Creek) and its Tributaries, Washoe County, Nevada", Case No. 83-6641, March 30, 1988, In the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

sources, Applications 71532 and 71533, are described as “Unnamed Springs.” By plotting their location on the Dogskin Mnt., Nevada – California Quadrangle, it was determined that these unnamed spring sources are located within the Warm Springs Valley Creek drainage area, and as such they are deemed tributary and fully appropriated under the decree. The State Engineer finds Applications 71269 through 71277 and 71529 through 71533 request appropriations of water from sources deemed fully appropriated under the Warm Springs Valley Creek Decree.

### III.

Applications 71269 through 71277 and 71529 through 71533 request the State Engineer grant permits in the amount of 5.0 cfs from each of the spring and stream sources under the above applications. Based on the spring and stream flow data collected by the State Engineer there is insufficient water to meet existing demands. The State Engineer finds that there is insufficient water at the source for Applications 71269 through 71277 and 71529 through 71533.

### IV.

While the fully appropriated nature of Warm Springs Valley Creek and its tributary sources preclude additional appropriation of its water from occurring outside the decree, the issue of priority should be briefly examined. The priority of a surface water right is determined either through the adjudication process or by the date of its filing in the State Engineer’s office. Under a priority system, first in time equates to first in use, with senior water rights being the first water rights served. Once the right has been fully satisfied, the junior appropriator may be served. Since the system is fully appropriated, additional appropriations of water under any permits issued under the subject applications would be at the expense of the senior water rights. The State Engineer finds that the approval of the subject applications would conflict with existing water rights on the Warm Springs Valley Creek system.

### V.

Applications 71269 through 71277 states in the remarks that the applications are being filed for the unappropriated water remaining as a result of approved change applications. The permit numbers are not declared in the remarks but it is assumed that they are referring to Permits 64073, 64078 and 64079, which were filed by Robert W. and Nanette Marshall to change Decreed Claim No. V-02737 and Permits 28369 and 34960, respectively, whose source is Warm Springs Valley Creek. Under State Engineer’s Ruling No. 5066 and the terms of Permits 64073, 64078 and 64079 the State Engineer allowed the consumptive use portion of each of the

rights to be transferred from irrigation purposes to municipal use, the non-consumptive use portion was to remain in the hydrologic system for the recharge of the groundwater resources of the Warm Springs Valley.

Under Ruling No. 5066, Application 64081, filed by Robert W. and Nanette Marshall to appropriate 20 cfs from Warm Springs Valley Creek and its tributaries, was denied because the State Engineer concluded that the Warm Springs Creek Decree declared the system fully appropriated.

The State Engineer finds that the non-consumptive portion of water not granted to Robert W. and Nanette Marshall under Permits 64073, 64078 and 64079 from Warm Springs Creek and its tributaries is not subject to further appropriation and in accordance with Ruling No. 5066 must remain in the hydrologic system to replenish the Warm Springs Valley groundwater basin and to provide water for the riparian habitat along the stream corridor.

### **CONCLUSIONS**

#### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>16</sup>

#### **II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>17</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.**

Applications 71269 through 71277 were filed for irrigation and domestic purposes and Applications 71529 through 71533 for municipal purposes from various spring and stream sources, which have been determined to be tributary to Warm Springs Valley Creek.

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<sup>16</sup> NRS chapter 533.

<sup>17</sup> NRS § 533.370(4).

The State Engineer concludes the Second Judicial District Court of the State of Nevada in and for the County of Washoe entered a Final Order of Determination in and for the Relative Rights of Warm Springs Valley Creek and its tributaries on March 30, 1988, and declared Warm Springs Valley Creek and its tributaries fully appropriated. The State Engineer further concludes that he has denied a prior application filed to appropriate additional water from Warm Springs Valley Creek and its tributaries.

**IV.**

The State Engineer concludes that there is no unappropriated water at the proposed sources.

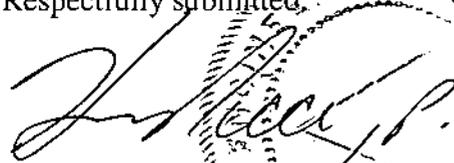
**V.**

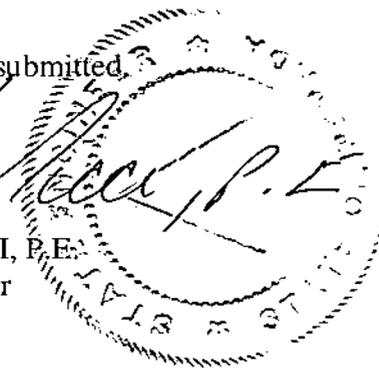
The State Engineer concludes that the approval of the subject appropriations would conflict with existing water rights.

**RULING**

The protest to Applications 71269 through 71277 is upheld. Applications 71269 through 71277 and 71529 through 71533 are hereby denied on the grounds that there is no unappropriated water at the sources and to approve these applications would violate the Warm Springs Valley Creek Decree issued by the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

Respectfully submitted,

  
HUGH RICCI, P.E.  
State Engineer



HR/KH/jm

Dated this 7th day  
of September 2005.