

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

IN THE MATTER OF APPLICATION )  
38640 FILED TO APPROPRIATE )  
PUBLIC WATER FROM A SURFACE )  
SOURCE WITHIN THE PINE VALLEY )  
HYDROGRAPHIC BASIN (53), )  
EUREKA COUNTY, NEVADA. )

**RULING**  
**# 5572**

**GENERAL**

**I.**

Application 38640 was filed on July 23, 1979, by Frank Paxton and Family, and later assigned to Kenneth R. Buckingham to appropriate 1.0 cubic feet per second (cfs) of water for the irrigation of 320 acres of land. The proposed place of use is described as being located in the N½ of Section 9, T.24N., R.49E., M.D.B.&M. The proposed point of diversion is Indian Creek Spring, which is described as being located in the NW¼ NW¼ of said Section 9.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

In a review of the records of the State Engineer it was determined that Permit 33302, Certificate 10247 was previously issued on Indian Creek Spring for 0.0062 cfs of water or sufficient to water 200 head of cattle. The spring is described on the certificate as a fenced area with a 24 inch perforated culvert 7 feet in depth placed into the spring with pipe running from the spring to a stockwatering trough.

On April 26, 2005, an informal field investigation was conducted. The spring area was very similar to that described under Permit 33302, Certificate 10247. The spring area was partially fenced and the culvert was still in place. There was a pipe running from the spring area to a stock tank; however, the pipe was not flowing any water and the tank was dry. Downstream from the tank were two stockwatering troughs that were also dry. Water was flowing from the spring area through a channel flowing water past a stock tank then past the two stock troughs and into one of three creek

---

<sup>1</sup> File No. 38640, official records in the Office of the State Engineer.

branches. The creek branches flow through a previously burned meadow area and ultimately combine into one channel, which becomes Indian Creek.<sup>1,2</sup>

The flow of water from Indian Creek Spring on April 26, 2005, was approximately 10 gallons per minute (gpm).<sup>3</sup> The flow from the spring was previously measured on July 30, 1982, at 16 gpm by water right surveyor William Nesbit in conjunction with the Proof of Beneficial Use filed for Permit 33302, Certificate 10247.<sup>4</sup>

Application 38640 requests an equivalent diversion rate of about 448.83 gpm. Currently, Permit 33302, Certificate 10247, represents a committed appropriation of about 2.78 gpm from Indian Creek Spring.<sup>5</sup> In addition, Nevada water law provides that before a person may obtain a right to the use of water from a spring he must ensure that wildlife, which customarily uses the water, will have access to it.<sup>6</sup> If all the water of the spring were appropriated, Nevada Revised Statute (NRS) § 533.367 could not be satisfied. In examining the amount of water requested versus the amount already committed and the amount of water produced by the spring, it can be seen that the amount of water requested is about 34 times greater than the maximum spring flow available ( $448.83 / (16 - 2.78) = 33.95$ ).

The State Engineer finds that based on the flow measurements taken in 1982 and 2005, Indian Creek Spring does not produce a sufficient quantity of water to justify approval of Application 38640. The State Engineer finds that approval of Application 38640 would be contrary to the provisions of NRS § 533.367.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>7</sup>

---

<sup>2</sup> Informal Field Investigation, April 26, 2005, official records in the Office of the State Engineer.

<sup>3</sup> *Ibid.*

<sup>4</sup> File No. 33302, official records in the Office of the State Engineer.

<sup>5</sup> *Ibid.*

<sup>6</sup> NRS § 533.367.

<sup>7</sup> NRS chapter 533.

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>8</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 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 there is insufficient flow produced by the spring source to support Application 38640; therefore, the application is subject to denial.

**RULING**

Application 38640 is hereby denied on the grounds that there is insufficient water at the proposed source.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 9th day of  
March 2006.

---

<sup>8</sup> NRS § 533.370(4).