

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

IN THE MATTER OF APPLICATIONS 71278 )  
AND 71279 FILED TO APPROPRIATE THE )  
WATER FROM VARIOUS SPRINGS AND )  
STREAMS WITHIN THE WARM SPRINGS )  
VALLEY HYDROGRAPHIC BASIN (084), )  
WASHOE COUNTY, NEVADA. )

**RULING**  
**# 5730**

**GENERAL**

**I.**

Application 71278 was filed on June 3, 2004, by Randy Venturacci to appropriate the waters of Vicki's Reservoir No. 31, 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 NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 13, T.24N., R.19E., M.D.B.&M.<sup>1</sup>

**II.**

Application 71279 was filed on June 3, 2004, by Randy Venturacci to appropriate the waters of Sugar Cane Spring Reservoir No. 33, 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 71278. The point of diversion is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 13, T.24N., R.19E., M.D.B.&M.<sup>2</sup>

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<sup>1</sup> File No. 71278, official records within the Office of the State Engineer.

<sup>2</sup> File No. 71279, official records within the Office of the State Engineer.

### III.

Robert W. and Nanette Marshall timely protested Applications 71278 and 71279 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>1-2</sup>

The Protestants request that the State Engineer deny Applications 71278 through 71279.

### 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>3</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.

The 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 State Engineer finds Applications 71278 and 71279 request appropriations of water from sources deemed fully appropriated under the Warm Springs Valley Creek Decree.

#### III.

Applications 71278 and 71279, request the State Engineer grant permits in the amount of 5.0 cfs from each of the reservoir spring 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 71278 and 71279.

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<sup>3</sup> "In the Matter of the Determination of the Relative Rights in and to the Waters of Warm Springs 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.

#### 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 71278 and 71279 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.

## VI.

Applications 71269 through 71277 and 71529 through 71533, which were filed to appropriate the waters of Warm Springs Creek and tributaries were denied by State Engineer Ruling No. 5505.<sup>4</sup> The State Engineer finds that he has denied previous applications from the same source.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>6</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 71278 and 71279 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.

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 prior applications filed to appropriate additional water from Warm Springs Valley Creek and its tributaries.

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<sup>4</sup> State Engineer's Ruling No. 5505, dated September 7, 2005, official records within the Office of the State Engineer.

<sup>5</sup> NRS chapter 533.

<sup>6</sup> NRS § 533.370(5).

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.

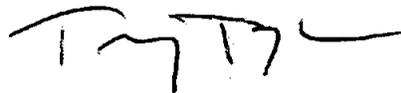
VI.

The State Engineer concludes that applications filed to appropriate water from the same source have previously been denied.

**RULING**

The protest to Applications 71278 and 71279 is upheld. Applications 71278 and 71279 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,



TRACY TAYLOR, P.E.  
State Engineer

TT/KH/jm

Dated this 30th day

of April, 2007.