

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

IN THE MATTER OF APPLICATIONS 74478 )  
AND 74479 FILED TO CHANGE THE POINT )  
OF DIVERSION, PLACE OF USE AND )  
MANNER OF USE OF A PORTION OF THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE PREVIOUSLY APPROPRIATED )  
UNDER CLAIMS OF VESTED RIGHT V04542 )  
AND V04543 RESPECTIVELY, WITHIN THE )  
WASHOE VALLEY HYDROGRAPHIC BASIN )  
(89), WASHOE COUNTY, NEVADA. )

**RULING**

**#5805**

**GENERAL**

**I.**

Application 74478 was filed on July 6, 2006, by the Rasmussen Family Trust dated 11/23/1992, to change the point of diversion, place of use and manner of use of 0.0044 cubic feet per second (cfs), not to exceed 3.1735 acre-feet annually (afa) of underground water previously appropriated under Claim of Vested Right V04542, for municipal and domestic purposes. The proposed place of use is described as being within the E $\frac{1}{2}$ , and the E $\frac{1}{2}$  of the W $\frac{1}{2}$  of Section 23, the NW $\frac{1}{4}$ , and the W $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 24, the N $\frac{1}{2}$  N $\frac{1}{2}$ , the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$ , and the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 26, all within T.17N., R.19E., M.D.B.&M. The existing place of use is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 11, T.16N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 23, T.17N., R.19E., M.D.B.&M. The existing point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 11, T.16N., R.19E., M.D.B.&M.<sup>1</sup>

**II.**

Application 74479 was filed on July 6, 2006, by the Rasmussen Family Trust dated 11/23/1992, to change the point of diversion, place of use and manner of use of 0.0230 cfs, not to exceed 16.6641 afa of underground water previously appropriated under Claim of Vested Right V04543, for municipal and domestic purposes. The proposed place of use is described as being within the E $\frac{1}{2}$ , and the E $\frac{1}{2}$  of the W $\frac{1}{2}$  of Section 23, the NW $\frac{1}{4}$ , and the W $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 24, the N $\frac{1}{2}$  N $\frac{1}{2}$ , the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$ , and the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 26, all within T.17N., R.19E., M.D.B.&M. The existing place of use is described as being located

<sup>1</sup> File No. 74478, official records in the Office of the State Engineer.

within the NE¼ SW¼ of Section 11, T.16N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 23, T.17N., R.19E., M.D.B.&M. The existing point of diversion is described as being located within the NE¼ SW¼ of Section 11, T.16N., R.19E., M.D.B.&M.<sup>2</sup>

### **FINDINGS OF FACT**

#### **I.**

Claims of Vested Right V04542 and V04543 were filed on October 17, 1985, for irrigation purposes and have a claimed priority date of “before 1913.” The irrigated land claimed under V04542 is an area historically irrigated under Claim V02395 of the Franktown Creek Decree. The irrigated land under and V04543 is an area also historically irrigated under Claim V02395 of the Franktown Creek Decree, which has a priority date of 1855.<sup>3</sup> The State Engineer finds that the land claimed as irrigated under V04542 and V04543 is supplemental to the waters of Franktown Creek and its tributaries. The State Engineer has previously permitted two claimed pre-statutory supplemental ground-water rights to be changed from the decreed place of use to other areas of irrigation that also have decreed water rights. *See*, Permits 70033 and 70298. Two other claimed pre-statutory ground-water irrigation rights were permitted to be changed as they were determined to not be supplemental. *See*, Permits 70034 and 70299. As to the water requested to be changed under Applications 74478 and 74479, the State Engineer finds they request to change claimed pre-statutory supplemental ground-water rights used for irrigation.

#### **II.**

Supplemental underground rights are primarily used for the purpose of insuring that irrigated land can receive its full duty of water when surface water rights cannot be satisfied due to some circumstance that is out of the control of the farmer, such as drought. In a normal water year, it is expected that the supplemental underground right would not be utilized and only a portion of the right would be utilized in a drought year. The supplemental underground right is tied to the surface water on the existing place of use. Under most circumstances, the supplemental underground water cannot be changed without a corresponding change in the surface water, i.e. both the surface water and underground water must move together or, in some circumstances, the surface water may be moved if the underlying supplemental underground water is withdrawn.

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<sup>2</sup> File No. 74479, official records in the Office of the State Engineer.

<sup>3</sup> Findings of Fact, Conclusions of Law and Decree, In the Matter of the Determination of the Relative Rights in and to the Waters of Franktown Creek and its Tributaries, Case No. 182418, Second Judicial District Court of Nevada, in and for the County of Washoe, 1960.

The State Engineer finds the request to allow these supplemental ground-water rights to be allowed for year-round use by a municipality would result in an additional and increased use of the water source in an amount more than historically used. The State Engineer finds that in this case, the Applicant has proposed to sever the supplemental underground water from the surface water on the existing place of use to utilize the underground water for municipal purposes within one of Washoe County's service areas, which is an area completely distinct and separate from its original place of use.

### III.

The State Engineer has previously denied applications for new appropriations of ground-water on the grounds that existing appropriations within the Washoe Valley Hydrographic Basin exceeds the estimate of the ground-water basin's natural recharge.<sup>4</sup> The State Engineer finds if approved, Applications 74478 and 74479 would pump an additional 19.8376 afa of water from the Washoe Valley Hydrographic Basin, would sever supplemental underground rights from their overlying surface water and would improperly change the character of the supplemental underground rights. The State Engineer finds the change proposed by Applications 74478 and 74479 is inconsistent with the supplemental character of Claims of Vested Right V04542 and V04543, would result in an additional withdrawal of underground water from the Washoe Valley aquifer that would not otherwise occur, thus creating a de facto water appropriation of 19.8376 afa in a ground-water basin where the committed ground-water resource exceeds the estimate of the ground-water basin's natural recharge.

## CONCLUSIONS

### I.

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

### II.

The State Engineer is prohibited by law from granting a change 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

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<sup>4</sup> State Engineer's Ruling Nos. 4756, 4589, 4139, 3651, 3343 and 3201.

<sup>5</sup> NRS chapters 533 and 534.

<sup>6</sup> NRS § 533.370(5).

D. the proposed use or change threatens to prove detrimental to the public interest.

**III.**

The State Engineer concludes approval of Applications 74478 and 74479 would conflict with existing rights and would threaten to prove detrimental to the public interest.

**RULING**

Applications 74478 and 74479 are hereby denied on the grounds that their approval would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/KE/jm

Dated this 4th day of

January, 2008.