

IN THE OFFICE OF STATE ENGINEER  
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATIONS )  
55363, 55364, 55365, 55366, )  
55367, 55368 AND 55369 FILED TO )  
APPROPRIATE THE PUBLIC WATERS )  
OF VARIOUS UNNAMED SPRINGS )  
WITHIN THE SPRING VALLEY )  
HYDROGRAPHIC BASIN (184) WHITE )  
PINE COUNTY, NEVADA. )

RULING

**#5860**

GENERAL

I.

Application 55363 was filed on October 11, 1990, by Reed B. Robison to appropriate 0.25 cubic feet per second (cfs) of water from unnamed spring No. 1. The proposed manner and place of use is for the irrigation of not more than 400 acres of land located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 1, the NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$  and the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 12, all within T.18N., R.66E., M.D.B.&M., in addition to the SW $\frac{1}{4}$  NW $\frac{1}{4}$  and the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, T.18N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 1, T.18N., R.66E., M.D.B.&M.<sup>1</sup>

II.

Application 55364 was filed on October 11, 1990 by Reed B. Robison to appropriate 0.25 cfs of water from unnamed spring No. 2. The proposed manner and place of use is for the irrigation of not more than 400 acres of land located within the same place of use described under Application 55363. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 1, T.18N., R.66E., M.D.B.&M.<sup>2</sup>

<sup>1</sup> File Number 55363, official records in the Office of the State Engineer.

<sup>2</sup> File Number 55364, official records in the Office of the State Engineer.

**III.**

Application 55365 was filed on October 11, 1990, by Reed B. Robison to appropriate 0.25 cfs of water from unnamed spring No. 3. The proposed manner and place of use is for the irrigation of not more than 400 acres of land located within the same place of use described under Application 55363. The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 1, T.18N., R.66E., M.D.B.&M.<sup>3</sup>

**IV.**

Application 55366 was filed on October 11, 1990, by Reed B. Robison to appropriate 0.25 cfs of water from unnamed spring No.4. The proposed manner and place of use is for the irrigation of not more than 400 acres of land located within the same place of use described under Application 55363. The proposed point of diversion is described as being located within the SW¼ SW¼ of Section 1, T.18N., R.66E., M.D.B.&M.<sup>4</sup>

**V.**

Application 55367 was filed on October 11, 1990, by Reed B. Robison to appropriate 0.25 cfs of water from unnamed spring No. 5. The proposed manner and place of use is for the irrigation of not more than 400 acres of land located within the same place of use described under Application 55363. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 12, T.18N., R.66E., M.D.B.&M.<sup>5</sup>

**VI.**

Application 55368 was filed on October 11, 1990, by Reed B. Robison to appropriate 0.25 cfs of water from unnamed spring No.6. The proposed manner and place of use is for the irrigation of not more than 400 acres of land located within the same place of use described under Application 55363. The proposed point of

---

<sup>3</sup> File Number 55365, official records in the Office of the State Engineer.

<sup>4</sup> File Number 55366, Official records in the Office of the State Engineer.

<sup>5</sup> File Number 55367, Official records in the Office of the State Engineer.

diversion is described as being located within the NE¼ NW¼ of Section 12, T.18N., R.66E., M.D.B.&M.<sup>6</sup>

**VII.**

Application 55369 was filed on October 11, 1990, by Reed B. Robison to appropriate 0.25 cfs of water from unnamed spring No.7. The proposed manner and place of use is for the irrigation of not more than 400 acres of land located within the same place of use described under Application 55363. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 12, T.18N., R.66E., M.D.B.&M.<sup>7</sup>

**VIII.**

All of the subject applications were protested by the U.S.D.I. National Park Service, which eventually withdrew its protests on September 16, 1991.<sup>1,2,3,4,5,6,7</sup>

**IX.**

Applications 55367, 55368 and 55369 were timely protested by the City of Ely; however, the City later withdrew its protest to Application 55367. It protested the applications on the following grounds:

New wells may lower the water table and be detrimental to existing water rights of the City of Ely. Our rights are Municipal rights and a detriment to these existing rights would be adverse to public interest.

**FINDINGS OF FACT**

**I.**

The approval of a surface water right permit is predicated, in part, upon the condition that its approval will not conflict with existing water rights. One of the initial steps in making this determination is to identify all active water right filings on the spring or stream in question.<sup>8</sup> The creation of the State Engineer's water right database makes this type of search

---

<sup>6</sup> File Number 55368, Official records in the Office of the State Engineer.

<sup>7</sup> File Number 55369, Official records in the Office of the State Engineer.

<sup>8</sup> NRS § 533.370(5).

relatively easy with a high degree of accuracy. A recent review of the database determined that no additional water right applications, permits, or claims of vested right are filed upon the subject springs.<sup>9</sup> Additionally, it was found during this research, that the springs in question are not tributary to any decreed stream systems. The State Engineer finds that the approval of the subject water right applications would not compete with a preexisting use of the water by a senior appropriator.

## II.

The importance of providing the state's wildlife with viable sources of water is underscored by NRS § 533.367. This provision of the Nevada water law requires that before a person obtains the right to use water from a spring, he must ensure that wildlife will have access to it. When applied to the subject applications, the State Engineer finds that sufficient water must be present at each of the springs to satisfy a customary wildlife use in addition to the irrigation use proposed by the applicant.

## III.

It is the Applicant's intent to capture the water generated by the seven springs for the irrigation of a 400 acre parcel of land. Before any consideration can be given regarding the approval or denial of these applications, it must be determined that sufficient water can be developed from these sources to adequately irrigate the proposed place of use. Accordingly, on June 22, 2001, an informal field investigation in the matter of Applications 55363, 55364, 55365, 55366, 55367, 55368 and 55369 was held at the proposed points of diversion.<sup>10</sup>

---

<sup>9</sup> Nevada Division of Water Resources water right database, June 16, 2006, official records in the Office of the State Engineer.

<sup>10</sup> Report of Informal Filed Investigation No. 1019, official records in the Office of the State Engineer.

Flow measurements and observations made during the investigation are summarized as follows.

Spring No. 1	<i>The co-mingled flow of these</i>
Spring No. 2	<i>three springs at the main</i>
Spring No. 3	<i>ditch was approx. 100 gallons per minute</i> <i>(gpm)</i>
Spring No. 4	Dry
Spring No. 5	Less than 2 gpm
Spring No. 6	Less than 4 gpm
Spring No. 7	Less than 2 gpm

Based upon the field observations collected during the June 22, 2001, site visit, the springs can be divided into two groups based upon their observed flows.

Spring Numbers 1, 2 and 3 combine their flows into a single unlined channel with a measured flow of approximately 100 gpm.<sup>10</sup> Using the State Engineer's standard conversions, a sustained flow rate of 100 gpm would equate to approximately 160.0 acre-feet of water per year. At this level, the commingled flow generated by the three springs would be adequate to irrigate 40.0 acres of land. This acreage estimate is based upon the assumption that it will require 4.0 acre-feet of water to irrigate 1.0 acre of land. In some instances, a lower value may be used for lower classifications of crops, such as the 2.0 acre-feet per acre assigned to pasture grass.<sup>11</sup> It was noted in the field investigation that predominate culture in the ranch area was pasture grass. But even if the per acre duty is reduced to 2.0 acre-feet, the irrigation of 400.0 acres of pasture grass would still require 800.0 acre-feet of water. The State Engineer finds that Applications 55363, 55364 and 55365 represent a measured flow that when combined, is adequate to irrigate approximately 40.0 acres of alfalfa or 80.0 acres of pasture grass.

---

<sup>11</sup> In the Matter of the Determination of the Relative Rights in and to Waters of Monitor Valley Southern Part (140-B), District Court in the Fifth Judicial District, In and For the County of Nye.

IV.

In regard to Spring Number 4, an observation was made during the June 22, 2001, field investigation that the spring had ceased to flow. Based upon this finding, the State Engineer finds that Spring Number 4 is unable to contribute any flow to the amount of water required to irrigate the 400 acres proposed under the subject applications.

V.

Applications 55366, 55367, 55368 and 55369 request an appropriation of water for irrigation purposes within a 400.0 acre place of use. The value of these applications as a source of irrigation water is greatly diminished by their low recorded flows. A standard conversion of the combined flows of Spring Number 4 through 6 equates to less than 7 acre-feet of water per year, which is inadequate for the amount of acreage proposed for irrigation under the subject applications. Their potential is so low that it is doubtful that these specific springs could be developed to a point where they qualified as legitimate sources of irrigation water. The State Engineer finds that the spring sources identified under Applications 55366, 55367, 55368 and 55369 cannot be considered as reliable sources of irrigation water.

VI.

The grounds of the City of Ely's protest is based on an assumption that these applications were filed for groundwater sources. The State Engineer finds that since these applications are filed for springs the City's protest lacks merit

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>12</sup>

---

<sup>12</sup> NRS chapter 533.

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>13</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.**

In regard to Applications 55363, 55364 and 55365, the State Engineer concludes that there is sufficient unappropriated water generated by unnamed spring Nos. 1 through 3, to irrigate a small portion of the proposed place of use. The extent of the irrigated acreage will be determined when the required Proof of Beneficial Use is submitted and reviewed by the Office of the State Engineer.

**IV.**

Applications 55366, 55367, 55368 and 55369 present a different scenario, with the flow of the springs being insufficient to meet the proposed irrigation use. The State Engineer concludes that it would not be in the public interest to approve irrigation permits on spring sources that are dominated by low flow conditions.

**RULING**

Applications 55366, 55367, 55368 and 55369 are hereby denied on the ground that their respective spring flows are insufficient to support the proposed manner of use.

Applications 55363, 55364 and 55365 are hereby approved subject to:

---

<sup>13</sup> NRS § 533.370(5).

1. existing water rights, and
2. the payment of the statutory permit fees, and
3. the total combined duty of Applications 55363, 55364 and 55365 being limited to 160 acre-feet annually.

The City of Ely's protest is overruled.

Respectfully Submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/MB/jm

Dated this 10th day of  
June, 2008.