

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

IN THE MATTER OF APPLICATION)
76425 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF A SURFACE)
SOURCE WITHIN THE CLOVERS)
AREA HYDROGRAPHIC BASIN (64),)
HUMBOLDT COUNTY, NEVADA.)

RULING
#5906

GENERAL

I.

Application 76425 was filed on October 19, 2007, by Marigold Mining Company to appropriate 1.0 cubic foot per second (cfs) from Trout Creek for storage purposes within portions of T.32N., R.42E. and R.43E., T.33N., R.42E. and R.43E., and T.34N., R.42E. and R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, T.32N., R.43E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Before an application to appropriate water can be considered for approval, it must be determined that there is sufficient unappropriated water available at the source and that the appropriation will not conflict with existing water rights. A review of records on file in the Office of the State Engineer shows that these issues were properly addressed under the review of this application, which seeks to appropriate water for storage from Trout Creek. Review conducted by the Division of Water Resources indicates that six existing rights representing both irrigation and stockwater rights are present downstream from the point of diversion under Application 76425 on Trout Creek. Analysis further indicated that most years there may not be enough water to serve existing rights and any new appropriations upstream would decrease the possibilities of serving water especially to Permit 3691. Accordingly the State Engineer finds that Trout Creek is fully appropriated by the existing downstream users. The State Engineer further finds that the approval of additional appropriations of water from Trout Creek would conflict with existing water rights.

¹ File No. 76425, official records in the Office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³

- 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.

Application 76425 requests an additional appropriation of water from Trout Creek, a water source that is fully appropriated under existing senior water rights. The State Engineer concludes that there is no unappropriated water at the proposed source and the approval of Application 76425 would conflict with existing water rights and thereby threaten to prove detrimental to the public interest.

RULING

Application 76425 is hereby denied on the grounds that there is no unappropriated water at the proposed source and its approval would conflict with existing rights and thereby threaten to prove detrimental to the public interest.

Respectfully submitted,


TRACY TAYLOR, P.E.
State Engineer

TT/DJL/jm

Dated this 25th day of

November, 2008.

² NRS chapters 533.

³ NRS § 533.370(5).