

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

IN THE MATTER APPLICATIONS 63956, )  
63957, 63958, 63959, 63960, 63961, 63962, )  
65689, 65690, 73215 AND 73898 FILED TO )  
APPROPRIATE THE WATERS OF UN- )  
NAMED SPRINGS WITHIN THE TRUCKEE )  
MEADOWS HYDROGRAPHIC BASIN (087) )  
AND TRUCKEE CANYON SEGMENT )  
HYDROGRAPHIC BASIN (091), WASHOE )  
COUNTY, NEVADA. )

**RULING**

**#5929**

**GENERAL**

**I.**

Application 63956 was filed on March 16, 1998, by FDC Group, L.L.C., to appropriate 0.50 cubic feet per second (cfs) of water from an unnamed spring for wildlife purposes for unknown numbers of wildlife, riparian habitat and associated landscaping within portions of Section 35, T.20N., R.18E., M.D.B.&M. and portions of Sections 2, 3, 10 and 11 all located within T.19N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the E½ of Lot 2 of the NW¼ of Section 3, T.19N., R.18E., M.D.B.&M.<sup>1</sup>

**II.**

Application 63957 was filed on March 16, 1998, by FDC Group, L.L.C., to appropriate 0.50 cfs of water from an unnamed spring for wildlife purposes for unknown numbers of wildlife, riparian habitat and associated landscaping within portions of Section 35, T.20N., R.18E., M.D.B.&M. and portions of Sections 2, 3, 10 and 11 all located within T.19N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 36, T.20N., R.18E., M.D.B.&M.<sup>2</sup>

**III.**

Application 63958 was filed on March 16, 1998, by FDC Group, L.L.C., to appropriate 0.50 cfs of water from an unnamed spring for wildlife purposes for unknown numbers of wildlife, riparian habitat and associated landscaping within portions of Section 35, T.20N., R.18E.,

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<sup>1</sup> File No. 63956, official records in the Office of the State Engineer.

<sup>2</sup> File No. 63957, official records in the Office of the State Engineer.

M.D.B.&M. and portions of Sections 2, 3, 10 and 11 all located within T.19N., R.18E., 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 2, T.19N., R.18E., M.D.B.&M. Remarks under this application state that this spring is the same source as appropriated under Permit 17534, Certificate 5521.<sup>3</sup> A resurvey of this area places Permit 17534, Certificate 5521, in the same section, township and range.

#### IV.

Application 63959 was filed on March 16, 1998, by FDC Group, L.L.C., to appropriate 0.50 cfs of water from an unnamed spring for wildlife purposes for unknown numbers of wildlife, riparian habitat and associated landscaping within portions of Section 35, T.20N., R.18E., M.D.B.&M. and portions of Sections 2, 3, 10 and 11 all located within T.19N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 31, T.20N., R.19E., M.D.B.&M.<sup>4</sup>

#### V.

Application 63960 was filed on March 16, 1998, by FDC Group, L.L.C., to appropriate 0.50 cfs of water from an unnamed spring for wildlife purposes for unknown numbers of wildlife, riparian habitat and associated landscaping within portions of Section 35, T.20N., R.18E., M.D.B.&M. and portions of Sections 2, 3, 10 and 11 all located within T.19N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 31, T.20N., R.19E., M.D.B.&M.<sup>5</sup>

#### VI.

Application 63961 was filed on March 16, 1998, by FDC Group, L.L.C., to appropriate 0.50 cfs of water from an unnamed spring for wildlife purposes for unknown numbers of wildlife, riparian habitat and associated landscaping within portions of Section 35, T.20N., R.18E., M.D.B.&M. and portions of Sections 2, 3, 10 and 11 all located within T.19N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 31, T.20N., R.19E., M.D.B.&M.<sup>6</sup>

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<sup>3</sup> File No. 63958, official records in the Office of the State Engineer.

<sup>4</sup> File No. 63959, official records in the Office of the State Engineer.

<sup>5</sup> File No. 63960, official records in the Office of the State Engineer.

<sup>6</sup> File No. 63961, official records in the Office of the State Engineer.

#### VII.

Application 63962 was filed on March 16, 1998, by FDC Group, L.L.C., to appropriate 0.50 cfs of water from an unnamed spring for wildlife purposes for unknown numbers of wildlife, riparian habitat and associated landscaping within portions of Section 35, T.20N., R.18E., M.D.B.&M. and portions Sections 2, 3, 10 and 11, all located within T.19N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 34, T.20N., R.18E., M.D.B.&M.<sup>7</sup>

#### VIII.

Application 65689 was filed on December 3, 1999, by FDC Group, L.L.C., to appropriate 0.50 cfs of water from an unnamed spring for wildlife purposes for unknown numbers of wildlife, riparian habitat and associated landscaping within portions of Section 35, T.20N., R.18E., M.D.B.&M. and portions of Sections 2, 3, 10 and 11 all located within T.19N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35, T.20N., R.18E., M.D.B.&M.<sup>8</sup>

#### IX.

Application 65690 was filed on December 3, 1999, by FDC Group, L.L.C., to appropriate 0.50 cfs of water from an unnamed spring for wildlife purposes for unknown numbers of wildlife, riparian habitat and associated landscaping within portions of Section 35, T.20N., R.18E., M.D.B.&M. and portions of Sections 2, 3, 10 and 11 all located within T.19N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the W $\frac{1}{2}$  of Lot 1 of the NE $\frac{1}{4}$  of Section 3, T.19N., R.18E., M.D.B.&M.<sup>9</sup>

#### X.

Application 73215 was filed on September 2, 2005, by Trent A. Averett to appropriate 5.0 gallons per minute (0.0111 cfs) of water from an unnamed spring for wildlife purposes for unknown numbers of wildlife within portions of the N $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 36, T.20N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 36, T.20N., R.18E., M.D.B.&M.<sup>10</sup>

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<sup>7</sup> File No. 63962, official records in the Office of the State Engineer.

<sup>8</sup> File No. 65689, official records in the Office of the State Engineer.

<sup>9</sup> File No. 65690, official records in the Office of the State Engineer.

<sup>10</sup> File No. 73215, official records in the Office of the State Engineer.

**XI.**

Application 73898 was filed on February 28, 2006, by Christopher Lippman to appropriate 1.22 acre feet annually (afa), (0.001685 cfs) of water from an unnamed spring for wildlife purposes for unknown numbers of wildlife within portions of the SE¼ SW¼ of Section 34, T.20N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SW¼ of Section 34, T.20N., R.18E., M.D.B.&M.<sup>11</sup>

**FINDINGS OF FACT**

**I.**

Applications 63956, 63957, 63958, 63959, 63960, 63961, 63962, 65689 and 65690 were originally filed to appropriate water for wildlife purposes that include riparian habitat, wildlife watering, temporary spray irrigation (first year for seed germination), and landscaping within common green belt areas located within the Somerset Subdivision on lands currently owned by Somerset, LLC and Somerset Owners Association.<sup>12</sup> The total combined duty of water for the first year of use is estimated at 299.86 acre-feet and 220.60 afa in subsequent years after vegetation has been established. All of these filings estimate an annual consumptive use of 63 afa “based on an estimated average flow of 65 gallons per minute for a period of 31 weeks.”<sup>1,2,3,4,5,6,7,8,9</sup> All of the applications were filed for a diversion rate of 0.50 cfs.

On June 14, 2007, June 15, 2007, and June 18, 2007, identical letters requesting further information on the proposed transportation of the water to the new place of use along with information showing access to the points of diversion under Applications 63956, 63957, 63958, 63959, 63960, 63961, 63962, 65689, 65690, 73215 and 73898 were sent to the Applicants and their agents.<sup>13, 14, 15</sup> No reply was received from the Applicant or its agent regarding Applications 65689 and 65690. The State Engineer finds that the Applicant was properly notified of the request for additional information regarding Applications 65689 and 65690 and the Applicant failed to provide the requested information; therefore, the applications can be considered for denial.

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<sup>11</sup> File No. 73898, official records in the Office of the State Engineer.

<sup>12</sup> Washoe County Assessor’s records accessed on the internet at [wcgisweb.washoecounty.us](http://wcgisweb.washoecounty.us).

<sup>13</sup> Letter dated June 15, 2007, File Nos. 63956, 63957, 63958, 63959, 63960, 63961, 63962, 65689, 65690, official records of the Office of the State Engineer.

<sup>14</sup> Letter dated June 14, 2007, File No. 73215, official records of the Office of the State Engineer.

<sup>15</sup> Letter dated June 18, 2007, File No. 73898, official records of the Office of the State Engineer.

## II.

On August 10, 2007, the State Engineer received a letter from the agent for Applicant FDC Group, L.L.C. stating that Somerset Development Company is successor in interest to the FDC Group for Applications 63956 and 63958 located within APN's 234-011-40 and 41, and 232-720-06. The letter further states that "Applications 63957, 63959, 63960, 63961 and 63962 are located on properties not owned by the FDC Group." The State Engineer finds Somerset Development Company has not filed records of conveyance to transfer Applications 63956, 63957, 63958, 63959, 63960, 63961, 63962, 65689 and 65690 into its name in the records of the Office of the State Engineer. The State Engineer finds there is no information in the records of the State Engineer indicating that the Applicant FDC Group, L.L.C. has access to or control of the proposed points of diversion under Applications 63956, 63957, 63958, 63959, 63960, 63961 or 63962; therefore, it cannot place the water requested for appropriation to beneficial use.

## III.

The August 10, 2007, letter further states "Over these many years FDC Groups' distribution plans for these unnamed springs have changed, however the intent to protect wildlife and riparian habitat remains the same. In keeping with a more natural eco-system, FDC Group's current plans include leaving the unnamed springs in their exiting [sic] state and natural flow channels."<sup>16</sup> Based on this letter, the State Engineer finds even if he were to grant Applications 63956, 63957, 63958, 63959, 63960, 63961, and 63962 that a reduced diversion rate and duty of water would be warranted.

## IV.

The State Engineer finds that Applications 63956 through 63962, inclusive, and 65689 and 65690, are filed within various drainages on the south facing slope of Peavine Mountain within the Truckee Meadows and Truckee Canyon Segment Hydrographic Basins. The State Engineer also finds that the nearest source to the Truckee River under these applications is Application 63956, that is located slightly less than 2 miles from the river. All of the other spring sources are 2 to 4 miles north of the Truckee River. Because of their distance from the Truckee River and limited discharge,

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<sup>16</sup> Letter dated August 10, 2007, File Nos. 63956, 63957, 63958, 63959, 63960, 63961, 63962, official records in the Office of the State Engineer's Office.

the State Engineer finds that Applications 63956, 63957, 63958, 63959, 63960, 63961, 63962, 65689 and 65690 are not tributary to the Truckee River.

V.

An informal field investigation in the matter of these applications was conducted by representatives of the Office of the State Engineer on August 18, 2007, and October 12, 2007.<sup>17</sup> As noted below, the spring source under Applications 63956, 63962, 73898 and Permit 15700, Certificate 5512, are the same source. Certificate 5512 allows for the appropriation of 0.00223 cfs for the irrigation of 0.33 acres of land from March 1<sup>st</sup> through December 31<sup>st</sup> of each year. The field investigation found there is sufficient water in a pond to satisfy Certificate 5512; however, at the time of the investigation there was no measurable flow occurring. The State Engineer finds there is no additional water available for appropriation under Applications 63956, 63962 or 73898 and to grant Applications 63956, 63962 or 73898 would conflict with existing rights.

As to Applications 63957 and 73215, the field investigation found that the headwaters of the spring system begins near or within the SW¼ of Section 23, T.20N., R.18E., M.D.B.& M. and water was observed in numerous locations within a portion of the canyon. Discharge was measured from two seeps at 2.01 and 2.22 gallons per minute and it was noted that water only flows a short distance before it infiltrates into the ground. The State Engineer finds there is water available for appropriation at this source.

As to Application 63958, the records of the Office of the State Engineer indicate there is a certificated water right on this source, Permit 17534, Certificate 5521, held by Landa Brothers to appropriate 0.00068 cfs or sufficient water for 3,000 head of sheep for stockwatering purposes from March 1<sup>st</sup> through December 1<sup>st</sup> of each year. The field investigation found the spring area consists of a small meadow to the west of canyon bottom and no overland flow was observed. The State Engineer finds there is no additional water available for appropriation from this source and to grant Application 63958 would conflict with existing rights.

As to Application 63959, the records of the Office of the State Engineer indicate there is a certificated water right on this source, Permit 17488, Certificate 5090, held by Landa Brothers to appropriate 0.0034 cfs or sufficient water for 554 head of sheep for stockwatering purposes from January 1<sup>st</sup> through December 31<sup>st</sup> of each year. The field investigation found that due to the

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<sup>17</sup> Field Investigation Report No. 1091, dated March 14, 2008, official records in the Office of the State Engineer.

discharge rate of the spring and dense phreatophytic vegetation they were unable to obtain a flow measurement. However, the discharge from the spring was only sufficient to offset evaporation, maintain a static level in a pond and no surface flow was observed. The State Engineer finds there is no additional water available for appropriation from this source and to grant Application 63959 would conflict with existing rights.

As to Application 63960, the records of the Office of the State Engineer indicate there is a certificated water right on this source, Permit 17486, Certificate 5089, held by Landa Brothers to appropriate 0.0034 cfs or sufficient water for 554 head of sheep for stock-watering purposes from January 1<sup>st</sup> through December 31<sup>st</sup> of each year. The field investigation found that water was ponding in a stock pond, but no measurable flow was observed. The State Engineer finds there is no additional water available for appropriation from this source and to grant Application 63960 would conflict with existing rights.

As to Application 63961, the records of the Office of the State Engineer indicate there is a certificated water right on this source, Permit 17485, Certificate 5088, held by Landa Brothers to appropriate 0.00223 cfs or sufficient water for 360 head of sheep for stock-watering purposes from January 1<sup>st</sup> through December 31<sup>st</sup> of each year. The field investigation found there was no measurable flow rate. The State Engineer finds there is no additional water available for appropriation from this source and to grant Application 63961 would conflict with existing rights.

As to Application 65689, the field investigation found the source dry; therefore, the State Engineer finds there is no water available for appropriation as applied for under the application.

As to Application 65690, the field investigation found no measurable flow existed; therefore, the State Engineer finds there is no water available for appropriation as applied for under the application.

## VI.

Applications 63962, 73898 and Permit 15700, Certificate 5512, are filed on a spring source identified as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 34, T.20N., R.18E., M.D.B.&M. Application 63956 is filed on a pond that is a spring source identified as being located within the E $\frac{1}{2}$  of Lot 2 of the NW $\frac{1}{4}$  of Section 3, T.19N., R.18E., M.D.B.&M. The Proof of Beneficial Use filed under Permit 15700, Certificate 5512, indicates that the place of use is located in the same location as the point of diversion for Application 63956. After a review of the records and an

informal field investigation, the State Engineer finds that Applications 63956, 63962, 73898 and Permit 15700, Certificate 5512, are filed on the same water source.<sup>18</sup>

The State Engineer finds that the Landa Brothers have an existing right on this source, which is identified as Permit 15700, Certificate 5512. The State Engineer finds that the existing irrigation right, issued under Permit 15700, Certificate 5512, is currently meeting the requirement of providing water to wildlife in the immediate area of this spring as set forth under NRS § 533.367.<sup>19</sup> The State Engineer finds that to approve additional water rights on this source as proposed under Applications 63956, 63962 and 73898 would conflict with the existing right and would not improve water availability for wildlife. Further, the State Engineer finds that there is no additional water available for appropriation from the unnamed spring.

## VII.

The point of diversion under Application 73215 is located on land that is owned by the Applicant, Trent Averett and is filed to appropriate water for wildlife purposes on the same source as previously described under Application 63957. The applicant under Application 63957 is the FDC Group, L.L.C. of which Somerset Development Company states it is the successor in interest, but no record of conveyance has been filed in the Office of the State Engineer. A letter dated August 17, 2004, from Mr. Averett stated that Application 63957 was filed on his property and he requested that said application be denied.<sup>2</sup> Another letter dated July 6, 2007, from Trent Averett stated: "I am opposed to Application #63957 submitted by FDC Group. There is no access allowed in order to develop the water source."<sup>2, 10</sup> The State Engineer finds that the applicant, FDC Group, L.L.C. does not own or control the land on which the unnamed spring is located under Application 63957 or have access to the proposed point of diversion under the application, and therefore, cannot demonstrate the ability to place the water to beneficial use subjecting the application to denial.

The point of diversion under Application 73215 is on land the Applicant owns. Nevada Revised Statute § 533.023 provides that the use of water for wildlife is a beneficial use. Nevada Revised Statute § 533.367 provides that before a person may obtain a water right from a spring source he must ensure that wildlife that customarily use the water will have access to it. In this case, the Applicant is requesting the use of water from the spring source for wildlife purposes. Therefore,

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<sup>18</sup> Field Investigation Report No. 1091, dated March 14, 2008, official records in the Office of the State Engineer.

<sup>19</sup> NRS § 533.367.

the State Engineer finds it would not threaten to prove detrimental to the public interest to grant the application for wildlife purposes.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>20</sup>

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>21</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.**

The State Engineer concludes that there is insufficient flow produced by the spring source to support Applications 63956, 63958, 63959, 63960, 63962 and 73898; therefore, the applications are subject to denial.

**IV.**

The State Engineer concludes that the issuance of any new permits under Applications 63956, 63962 and 73898 on the unnamed spring would conflict with existing rights under Permit 15700, Certificate 5512, and would thereby threaten to prove detrimental to the public interest.

**V.**

The State Engineer concludes that to approve Applications 63956, 63957, 63958, 63959, 63969, 63961 and 63962 on land that the Applicant does not own or control would threaten to prove detrimental to the public interest.

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<sup>20</sup> NRS chapter 533.

<sup>21</sup> NRS § 533.370(5).

**VI.**

The State Engineer concludes that the issuance of any new permit under Application 63958 on the unnamed spring would conflict with existing rights under Permit 17534, Certificate 5521, and would thereby threaten to prove detrimental to the public interest

**VII.**

The State Engineer concludes that the issuance of any new permit under Application 63959 on the unnamed spring would conflict with existing rights under Permit 17488, Certificate 5090, and would thereby threaten to prove detrimental to the public interest

**VIII.**

The State Engineer concludes that the issuance of any new permits under Application 63960 on the unnamed spring would conflict with existing rights under Permit 17486, Certificate 5089, and would thereby threaten to prove detrimental to the public interest.

**IX.**

The State Engineer concludes that the issuance of any new permit under Application 63961 on the unnamed spring would conflict with existing rights under Permit 17485, Certificate 5088, and would thereby threaten to prove detrimental to the public interest.

**X.**

The Applicant was properly notified of the requirement for additional information regarding Applications 65689 and 65690 and has failed to submit the information to the State Engineer's Office. The State Engineer concludes that the failure to submit requested information demonstrates the Applicant's lack of interest in pursuing Applications 65689 and 65690. The State Engineer further concludes that without the requested information it would threaten to prove detrimental to the public interest to issue a permit under the applications.

**XI.**

The State Engineer concludes that to approve Application 73215 on land that the Applicant owns and controls would not threaten to prove detrimental to the public interest.

**RULING**

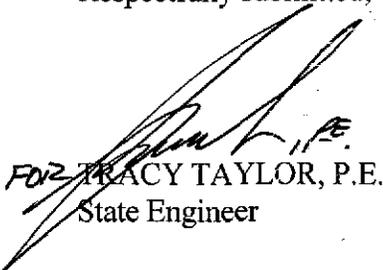
Applications 63956, 63958, 63959, 63960, 63961, 63962 and 73898 are hereby denied on the grounds that there is insufficient water at the proposed source, the applications conflict with existing surface-water rights and the Applicant cannot place the water to beneficial use as the Applicant has no control or access to the water source.

Application 63957 is hereby denied on the grounds that the Applicant does not own or control the land on which the water source is located and cannot place the water to beneficial use.

Applications 65689 and 65690 are hereby denied on the grounds that to approve an application in which the Applicant expresses no continued interest would threaten to prove detrimental to the public interest.

Application 73215 is hereby approved subject to payment of the statutory fees with the understanding that no development of the spring shall occur prior to the submission of a joint development plan approved by the Nevada Division of Wildlife.

Respectfully submitted,



FOIZ TRACY TAYLOR, P.E.  
State Engineer

TT/MM/jm

Dated this 9<sup>th</sup> day of  
February, 2009.