

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

IN THE MATTER OF APPLICATIONS )  
64998, 76623, AND 76624 FILED TO )  
APPROPRIATE THE PUBLIC WATERS )  
OF AN UNDERGROUND SOURCE )  
WITHIN THE THOUSAND SPRINGS )  
HYDROGRAPHIC BASIN – TOANO- )  
ROCK SPRINGS AREA (189B), ELKO )  
COUNTY, NEVADA. )

**RULING**  
**#6074**

**GENERAL**

**I.**

Application 64998 was filed on April 2, 1999, by Walker-Winecup-Gamble, Inc., to appropriate 3.5 cubic feet per second (cfs), not to exceed 2,500 acre-feet annually (afa) of water from an underground source for industrial purposes. The proposed place of use is described as being located within Sections 16, 17, 18, 19, 20, 21, 28, 29, 30, T.40N., R.66E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 5, T.39N., R.66E., M.D.B.&M.<sup>1</sup>

**II.**

Application 76623 was filed on January 15, 2008, by Clinton Wayne Parker to appropriate 2.7 cfs of water from an underground source for irrigation purposes. The proposed place of use is described as being located within the NW¼, N½ NE¼ of Section 21, T.40N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 21, T.40N., R.65E., M.D.B.&M.<sup>2</sup>

**III.**

Application 76624 was filed on January 15, 2008, by Clinton Wayne Parker to appropriate 5.4 cfs of water from an underground source for irrigation purposes. The proposed place of use is described as being located within Section 1, T.39N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 1 of Section 1, T.39N., R.65E., M.D.B.&M.<sup>3</sup>

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<sup>1</sup> File No. 64998, official records in the Office of the State Engineer.

<sup>2</sup> File No. 76623, official records in the Office of the State Engineer.

<sup>3</sup> File No. 76624, official records in the Office of the State Engineer.

## FINDINGS OF FACT

### I.

State Engineer's Order No. 853, issued April 30, 1985, described and designated the Thousand Springs Valley Hydrographic Basin (189), including the Toano-Rock Spring sub-area (189B), as a groundwater basin in need of additional administration under the provisions of NRS § 534.030.<sup>4</sup> The State Engineer finds that Applications 64998, 76623 and 76624, have proposed points of diversion located within the hydrologic boundaries of the designated basin.

### II.

An examination of the records of the Office of the State Engineer identified water right applications with proposed points of diversion located within the Toano-Rock Spring Area that have been denied, in part, on the basis that existing water rights exceed the estimated yield of the groundwater basin.<sup>5</sup> In State Engineer's Ruling No. 4152, then Protestant Walker-Winecup-Gamble, Inc., protested the appropriation of additional groundwater, in part, on the basis that there was no unappropriated groundwater in the proposed source of supply. The State Engineer upheld the protest of Walker-Winecup-Gamble, Inc., and denied Applications 58894 through 58904 within the Toano-Rock Spring Area. Under Application 64998, Applicant Walker-Winecup-Gamble, Inc., seeks to appropriate 2,500 afa of water and under Applications 76623 and 76624 Applicant Parker seeks to appropriate about 2,800 afa of water from the same groundwater source.

The State Engineer finds that previous applications to appropriate additional water within the Toano-Rock Spring Area have been denied.

### III.

Nevada Revised Statutes Chapters 533 and 534 and the policies developed by the Office of the State Engineer control the appropriation of water within the state of Nevada. Under the provisions found under NRS § 533.370(5), before an application that requests a new appropriation of underground water can be considered for approval it must be determined that there is unappropriated water available at the targeted source.

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<sup>4</sup> State Engineer's Order No. 853, April 30, 1985, official records in the Office of the State Engineer.

<sup>5</sup> State Engineer's Ruling No. 4152, official records in the Office of the State Engineer.

The Division of Water Resources currently estimates the perennial yield of the Toano-Rock Spring Area at 2,600 afa.<sup>6</sup> A review of records on file in the Office of the State Engineer shows that the committed groundwater resources in the form of permits and certificates issued by the State Engineer are approximately 7,500 afa, excluding any existing domestic wells.<sup>7</sup>

The State Engineer finds that existing water rights in the Toano-Rock Spring Area exceed the available perennial yield. The State Engineer further finds that there is no additional water available to satisfy the proposed appropriation requested under Applications 64998, 76623 and 76624.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>8</sup>

#### II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:<sup>9</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 previous applications to appropriate groundwater have been denied in the Toano-Rock Spring Area; therefore, Applications 64998, 76623 and 76624 may be considered for denial.

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<sup>6</sup> Office of the State Engineer, *Water for Nevada, State of Nevada Water Planning Report No. 3*, Oct. 1971.

<sup>7</sup> Hydrographic Area Summary, Water Rights Database, Basin 189B, August 13, 2010, official records in the Office of the State Engineer.

<sup>8</sup> NRS Chapters 533 and 534.

<sup>9</sup> NRS § 533.375(5).

**IV.**

The committed groundwater resources of the Toano-Rock Spring Area currently exceed the groundwater basin's estimated perennial yield. The State Engineer concludes that the approval of the subject applications would result in the withdrawal of groundwater in excess of the perennial yield; therefore, any approvals would adversely affect existing rights and threaten to prove detrimental to the public interest.

**RULING**

Applications 64998, 76623 and 76624 are hereby denied on the grounds that there is no unappropriated water at the proposed source, and their approval would conflict with existing rights and threaten to prove detrimental to the public interest.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 3rd day of  
December, 2010.