

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

IN THE MATTER OF APPLICATION 70759 )  
FILED TO CHANGE THE POINT OF )  
DIVERSION, PLACE OF USE AND )  
MANNER OF USE OF THE PUBLIC )  
WATERS OF AN UNDERGROUND )  
SOURCE CLAIMED UNDER PROOF OF )  
APPROPRIATION V-05196 WITHIN THE )  
TRUCKEE MEADOWS HYDROGRAPHIC )  
BASIN (87), WASHOE COUNTY, NEVADA. )

**RULING**

**#6216**

**GENERAL**

**I.**

Application 70759 was filed on January 9, 2004, by the W. E. Buck Family Trust dated July 2, 1987, and John C. Wood to change the point of diversion, place of use and manner of use of a 3.90 acre-feet of groundwater for municipal purposes. The water sought to be changed by Application 70759 is claimed as water previously appropriated for irrigation under Proof of Appropriation V-05196. The existing manner of use is claimed as irrigation and commercial purposes described as being acres of land located within the N½ NW¼ of Section 29, T.18N., R.20E., M.D.B.&M. The existing point of diversion is described as being located within the N½ NW¼ of Section 29, T.18N., R.20E., M.D.B.&M. The proposed place of use is described as being the Washoe County South Truckee Meadows General Improvement District's service area, which is contained within the Truckee Meadows Hydrographic Basin. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 19, T.18N., R.20E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

Proof of Appropriation V-05196 was filed on November 9, 1990, asserting a pre-statutory vested water right for commercial and irrigation purposes. The proof claimed the use of groundwater for stock watering of 35 large farm animals, commercial and domestic purposes associated with a divorce/dude ranch, including 15 units, a swimming pool, manager and employee quarters and a central restaurant with dining facility, along with two irrigated acres.

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<sup>1</sup> File No. 70759, official records in the Office of the State Engineer.

The irrigation use is claimed as being non-supplemental groundwater from a well, all located within the N½ NW¼ of Section 29, T.18N., R.20E., M.D.B.&M., on a place formally known as the Lazy A Ranch. By letter dated November 28, 2001, the Office of the State Engineer informed the claimant that Proof of Appropriation V-05196 represents an unadjudicated claim of a pre-statutory vested water right from a groundwater source and that to that date very little information had been submitted in support of the claimed water right. At that time, the State Engineer withheld action on several pending change applications and informed the interested parties that additional information was required to substantiate the water claimed under Proof of Appropriation V-05196. A letter dated June 30, 2003, indicates that Washoe County provided a June 29, 1939, aerial photograph of the site, which the State Engineer accepted as likely to show that a well was drilled on the site around 1937-1938, but also indicates that the aerial photograph was inconclusive to extent of development and status and location of any irrigation areas.<sup>2</sup> The letter further indicates that no information supporting the 2.0 acres of irrigation claimed had been provided and based on the information submitted to that date, the State Engineer considered that any possible irrigation was likely supplemental to irrigation from Truckee River water. The claimant was again informed on June 23, 2004, that any possible groundwater use for irrigation would be considered as supplemental to Truckee River water. The State Engineer finds the claimant under Proof of Appropriation V-05196 has not provided sufficient information to support a claim of stand-alone groundwater use under the proof.

## II.

Staff of the Division of Water Resources initiated an independent investigation in order to determine if any information supported the claimed irrigation use of groundwater under Proof of Appropriation V-05196 and found that on July 8, 2008, the Nevada State Historic Preservation Office had recorded an inventory. This inventory substantiated the existence of 18 buildings within the existing place of use described above, those being a guest house, barn, stone house, chuck house, guest cottage, domicile, four cottages, three outbuildings, two pump houses and a pool. A field investigation performed by the Office of the State Engineer also validated that structures had previously been built in that location.<sup>3</sup>

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<sup>2</sup> File No. V-05196, official records in the Office of the State Engineer.

<sup>3</sup> State Engineer's Field Investigation Report 863, dated July 30, 1990, official records in the Office of the State Engineer.

Aerial photographs taken during 1939 do not show any irrigated acreage located within the N½ NW¼ of Section 29, T.18N., R.20E., M.D.B.&M. that did not have surface water appurtenant to it as depicted on the Truckee River Adjudication Map under Truckee River Claim 89. This surface water right is further described in the Truckee River Decree.<sup>4</sup> The State Engineer finds no information substantiates a stand-alone groundwater right for irrigation as claimed under Proof of Appropriation V-05196 and the claimant has failed to file any information that substantiates the claim. The State Engineer finds, based on the 1939 aerial photograph and a review of satellite imagery that is available up to the current time, that there is no substantial evidence to show any use of groundwater for irrigation that is not supplemental to surface water. The State Engineer finds that without substantial proof of the existence of the water right being sought to be changed there is no water that can be changed under Application 70759 and the application is subject to denial.

### CONCLUSIONS

#### I.

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

#### II.

The State Engineer is prohibited by law from granting a permit under a change application that requests 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 protectable 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.

Nevada Revised Statute § 533.325 provides that a person may file a change application for water already appropriated. The State Engineer concludes that without substantial proof that the water to be changed as applied for under Application 70759 was a pre-statutory vested right

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<sup>4</sup> Final Decree in *United States v. Orr Water Ditch Co.*, In Equity Docket No. A-3 (D. Nevada 1944).

<sup>5</sup> NRS Chapter 533.

<sup>6</sup> NRS § 533.370(2).

to water already appropriated, it would threaten to prove detrimental to the public interest to allow the use of the water.

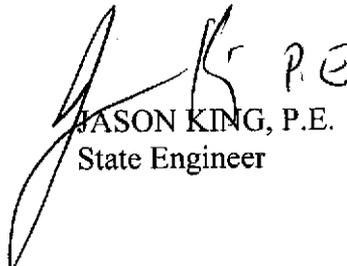
**IV.**

The State Engineer concludes that the Applicant under Application 70759 has failed to provide substantial evidence of the existence of the water it seeks to change under the application, thus, there is no water appropriated that supports Application 70759.

**RULING**

Application 70759 is hereby denied on the grounds that there is no proof that the water sought to be changed is water already appropriated at the source and to permit the use of an unadjudicated and unsubstantiated water right would threaten to prove detrimental to the public interest.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 19th day of  
February, 2013.