

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

IN THE MATTER OF APPLICATION 57668 FILED )  
TO APPROPRIATE THE WATERS FROM AN UNNAMED )  
SPRING LOCATED WITHIN THE TRUCKEE MEADOWS )  
(87), WASHOE COUNTY, NEVADA. )

RULING

**#4173**

GENERAL

I.

Application 57668 was filed on May 18, 1992, by A.D. and Revé Jensen to appropriate 0.5 cubic feet per second (cfs) from an unnamed spring for irrigation and domestic purposes, located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  and NE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 11, T.18N., R.19E., M.D.B.&M. The point of diversion is located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 2, T.18N., R.19E., M.D.B.&M.<sup>1</sup>

II.

Application 57668 was not protested. However, a letter of concern was submitted by counsel for Mrs. Mattie Lee Flagg, a downstream water right holder.<sup>2</sup> Mrs. Flagg is concerned about a possible conflict with an existing right, Permit 11319, Certificate 2936.

III.

A field investigation was conducted by staff of the Division of Water Resources, on June 16, 1993.<sup>3</sup> A second field investigation was conducted on August 3, 1994.<sup>4</sup>

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<sup>1</sup> File No. 57668, official records in the Office of the State Engineer.

<sup>2</sup> Letter dated July 14, 1994, from Mr. Frank Yeamans, File No. 57668, official records in the Office of the State Engineer.

<sup>3</sup> Report of Field Investigation No. 937, January 24, 1993, official records in the Office of the State Engineer.

<sup>4</sup> Report of Field Investigation No. 956, February 22, 1995, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Four springs, as described on the map supporting Permit 11319, contribute to the flow of water in the channel that serves as the source of water under Permit 11319, Certificate 2936. One of these springs is described as a point which bears North 81° 43' East from the Southwest corner of Section 2, T.18N., R.19E., M.D.B.&M., a distance of 795.9 feet.<sup>5</sup>

The source of water under Application 57668 is a spring described as a point from which the Southwest corner of Section 2, T.18N., R.19E., M.D.B.&M., bears South 82° 12' 40" West, a distance of 775.0 feet.<sup>1</sup>

The two points described above are located very close to each other. The staff of the Division of Water Resources could find only one spring in the immediate vicinity of the above described locations.<sup>4</sup> If the water from the spring were not diverted to the Jensen property, it would be co-mingled with the water from the other springs, as depicted on the map supporting Permit 11319, and flow down the channel to the point of diversion of Permit 11319, Certificate 2936.<sup>4</sup> The State Engineer finds that the spring described as the point of diversion of Application 57668 is the same as one of the springs depicted on the map supporting Permit 11319. The State Engineer further finds that the water from said spring must be considered a part of the system of springs that contribute water to the channel which is the source of water for Permit 11319, Certificate 2936.

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<sup>5</sup> Map filed to support Permit 11319, official records in the Office of the State Engineer.

II.

Water from the spring in question is being diverted to the Jensen property.<sup>4</sup> The applicant asserts that this diversion began more than 50 years ago, even before Mr. Frost filed Application 11319<sup>6</sup> and that Mr. Frost did not object to this diversion.<sup>4</sup> The State Engineer finds that the 50 years of use does not qualify for a vested right (pre-statutory) to use the water.

III.

Until now, no one has ever filed an application for a water right permit to divert water from said spring and irrigate the property now owned by the Jensens, as required by statute.<sup>7</sup> The State Engineer finds that a water right to divert the water and irrigate the Jensen property has never been obtained.

IV.

The spring which is the source of water for Application 57668, is part of the system of springs that makes up the water already appropriated under Permit 11319, Certificate 2936. The State Engineer finds that there is no unappropriated water at this source. The State Engineer further finds that the approval of Application 57668 would conflict with the use of water under Permit 11319, Certificate 2936.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter.<sup>8</sup>

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<sup>6</sup> Affidavits signed by Angela S. Persighel and Julius A. Ballardini, dated August 1, 1994, and August 2, 1994, respectively, filed to support Application 57668, official records in the Office of the State Engineer.

<sup>7</sup> NRS 533.060(3).

<sup>8</sup> NRS 533.

II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.<sup>9</sup>

III.

No prescriptive right to the use of any water appropriated or unappropriated can be acquired by adverse use or adverse possession for any period of time whatsoever, but any such right to appropriate any of such water shall be initiated by first making application to the State Engineer for a permit to appropriate the same as provided in NRS Chapter 533, and not otherwise.<sup>10</sup>

IV.

Application 57668 seeks to appropriate the water from a spring which is part of a system of springs that serves as the source of water for Permit 11319, Certificate 2936. Although the diversion of water from this spring to the Applicant's property has occurred for many years, no water right is established by virtue of that use. The State Engineer concludes that no water right exists for the diversion of water from the spring for use on the applicant's property.

V.

There is no unappropriated water on the source. The approval of Application 57668 would conflict with the existing water rights.

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<sup>9</sup> NRS 533.370.

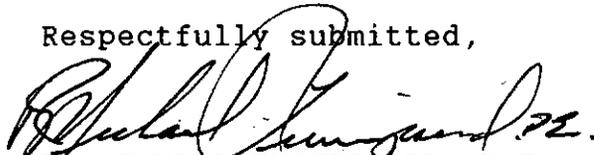
<sup>10</sup> NRS 533.060.

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RULING

Application 57668 is denied on the grounds that there is no unappropriated water on the source and the proposed use under said application would conflict with existing rights.

Respectfully submitted,



E. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/JCP/pm

Dated this 24th day of  
March, 1995.