

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

IN THE MATTER OF APPLICATIONS 64458 )  
AND 64459 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF SPRINGS LOCATED WITHIN )  
THE SMITH VALLEY HYDROGRAPHIC BASIN )  
(107), DOUGLAS COUNTY, NEVADA. )

RULING

# 4881

GENERAL

I.

Application 64458 was filed on September 17, 1998, by Gary Dykes to appropriate 0.1 cubic feet per second (c.f.s.) of water from a spring source for domestic purposes and to irrigate 4 acres of land in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 4, T.13N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 3, T.13N., R.23E., M.D.B.&M.<sup>1</sup>

II.

Application 64459 was filed on September 17, 1998, by Gary Dykes to appropriate 0.1 c.f.s. of water from a spring source for domestic purposes and to irrigate 4 acres of land in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 4, T.13N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 3, T.13N., R.23E., M.D.B.&M.<sup>2</sup>

III.

State Engineer's Ruling No. 4764 was issued on August 11, 1999, and denied Applications 64458 and 64459<sup>3</sup>. The denial was based on the fact that there would be insufficient water at the source for the proposed use and for wildlife.

<sup>1</sup> File No. 64458, official records in the office of the State Engineer.

<sup>2</sup> File No. 64459, official records in the office of the State Engineer.

<sup>3</sup> State Engineer's Ruling No. 4764, dated August 11, 1999, official records in the office of the State Engineer.

**IV.**

On September 7, 1999, the applicant petitioned the Ninth Judicial District Court of the State of Nevada for review of State Engineer's Ruling No. 4764.

**FINDINGS OF FACT**

**I.**

A formal field investigation was held on Tuesday, November 9, 1999. Participating in this investigation were Michael Randall of the Nevada Division of Water Resources and Paul R. Taggart, Deputy Attorney General. The applicant Gary Dykes and J. D. Sullivan, his attorney were also present at the time of the field investigation.

**II.**

From a review of the records, the State Engineer finds that there are no other water right filings within the forty-acre subdivision in which the springs are located.

**III.**

The springs that are the subject of Applications 64458 and 64459 are located on land administered by the Bureau of Land Management and are northeast of the land owned by Mr. Dykes. The applicant had not secured from the Bureau of Land Management a right of permanent access across the federal land from the springs to his property. At the time of the field investigation, spring flow measurements were made at the proposed points of diversion. The spring under Application 64458 had a flow of one gallon per minute. The spring under Application 64459 had a flow of one and a half gallons per minute. The flows from both springs are collected and conveyed to the applicant's property through a common pipeline. The State Engineer finds that the total combined flow from the springs equates to approximately 2.5 gallons per minute.

**IV.**

During the field investigation, Mr. Dykes indicated that his intentions were to drip irrigate a windbreak and landscaping plants within the place of use. The investigator for the Division of Water Resources discussed with Mr. Dykes the statutory requirement to provide sufficient water at the subject springs to satisfy the customary use of the water by wildlife.<sup>4</sup> He said that it was his intention to comply with this requirement and to provide a water source near the springs for use by the native wildlife. The State Engineer finds that if the applicant provides water for wildlife, the approval of Applications 64458 and 64459 would not violate the provision of NRS § 533.367.

**V.**

Water from the springs that is the subject of Applications 64458 and 64459 may provide water in addition to that needed by native wildlife. The applicant provided information during the course of the field investigation that indicated that the proposed manner of use of the water is for aesthetic purposes rather than agricultural production. The State Engineer finds that the proposed manner of use would result in a use of water which will be significantly less than that normally allowed for agricultural purposes.

**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 an application to appropriate the public waters where:<sup>6</sup>

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<sup>4</sup> NRS § 533.367.

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

<sup>6</sup> NRS § 533.370(3).

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

**III.**

Applications 64458 and 64459 request appropriations of surface water from spring sources which are not currently held under any existing water rights. The State Engineer concludes that the approval of Applications 64458 and 64459 will not conflict with existing rights.

**IV.**

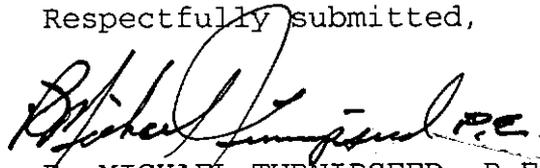
Applications 64458 and 64459 were initially denied by the State Engineer on the grounds that there was not sufficient water available at the proposed sources to satisfy the proposed manner of use. Additional information obtained by a field investigation determined that sufficient water may be derived from the subject sources for the purposes applied for. The State Engineer concludes based upon this additional information that the previous denial effected by State Engineer's Ruling No. 4764 must be rescinded.

RULING

State Engineer's Ruling No. 4764 is hereby rescinded and said Applications are hereby approved subject to:

1. the payment of statutory fees;
2. the applicant securing access to the springs from the Bureau of Land Management; and
3. the applicant will, subject to approval of the State Engineer, adequately provide wildlife with the first access to the water from each source.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MJR/cl

Dated this 14th day of  
March, 2000.