

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

IN THE MATTER OF APPLICATIONS )  
70394, 70395 AND 70396 FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF )  
SPRING #4, SPRING #2 AND SPRING #1, )  
RESPECTIVELY, WITHIN THE TRACY )  
SEGMENT HYDROGRAPHIC BASIN (083), )  
STOREY COUNTY, NEVADA. )

**RULING**

**#5434**

**GENERAL**

**I.**

Application 70394 was filed on September 10, 2003, by Storey County Properties Limited Liability Company to appropriate 0.25 cubic feet per second (cfs), not to exceed 58.98 million gallons annually (mga) of water from a spring source described by the applicant as Spring #4. The location of this spring is stated upon the application as being within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 1, T.18N., R.21E., M.D.B.&M. This application, if approved, would provide industrial and domestic water for use within an area encompassing all of Sections 19, 28, 29, 30, 31, 32, 33, 34, 35 and 36 and portions of Sections 20, 21, 22, 26, 27, T.19N., R.21E., M.D.B.&M., all of Sections 24, 25, 36 and portions of Sections 13 and 26, T.19N., R.20E., and all of Section 1 and portions of Sections 2 and 12, T.18N., R.21E., M.D.B.&M.<sup>1</sup>

**II.**

Applications 70395 and 70396 were also filed by Storey County Properties, Limited Liability Company on September 10, 2003. Each of these water right applications requests an appropriation of 0.125 cfs of water, with an associated annual duty of 90 acre-feet annually (afa). The proposed manner of use and place of use are

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<sup>1</sup> File No. 70394, official records in the Office of the State Engineer.

identical to those set forth in Application 70394. Application 70395 identifies its proposed point of diversion as Spring #1, which is described as being located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 12, T.18N., R.21E., M.D.B.&M.<sup>2</sup> Similarly, Application 70396 requests an appropriation of water from Spring #2, which is described as being within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 12, T.18N., R.21E., M.D.B.&M.<sup>3</sup>

### FINDINGS OF FACT

#### I.

All of the subject water right applications passed through the statutory publication and protest periods as required under the Nevada Revised Statutes (NRS). Although, no formal protests were submitted to request a denial of these applications, several letters of concern were sent to the State Engineer and have been incorporated into the written record maintained under the respective application numbers. The central theme expressed by these letters, centered upon the preservation of the springs as a vital source of water for the areas flora and fauna.<sup>1</sup> The fact that these letters were received after the statutory protest period had expired, necessitates that they be viewed as informal protests. Regardless of the status of their written comments, the State Engineer finds that the majority of the issues expressed by the citizens in their letters, would be addressed as a matter of routine procedure in the State Engineer's evaluation of the subject applications.

#### II.

A water right application that requests a new appropriation of water from a surface source can be considered for approval only if it meets the following criteria.<sup>4</sup>

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<sup>2</sup> File No. 70395, official records in the Office of the State Engineer.

<sup>3</sup> File No. 70396, official records in the Office of the State Engineer.

<sup>4</sup> NRS 533.370(4).

1. there must be sufficient unappropriated water available from the source
2. its approval can not adversely effect existing water rights which appropriate water from the same source
3. its approval must not threaten to prove detrimental to the public interest.

The amount of unappropriated water, if any, that is present at a specific spring source is determined through a simple analysis of the amount of water produced by the spring and the amount of water that is appropriated from the source under existing water rights. In the case of the subject applications, the records of the Office of the State Engineer did not include spring flow measurements specific to the spring sources in question. To remedy this situation, an informal field investigation was conducted on March 30, 2004, by representatives of the Office of the State Engineer. The findings of this site inspection are presented in Report of Field Investigation #1051, which has been incorporated into the records of the Office of the State Engineer. The following table summarizes the flow measurements obtained during the field investigation.

<u>Spring source</u>	<u>Spring flow(gpm)</u>	<u>Requested Amount(gpm)</u>
Spring #1	4.00	112.00
Spring #2	33.60	56.00
Spring #4	<1.00	56.00

Based upon field observations and measurements taken at all three springs, the State Engineer finds that in all instances the amount of water requested for appropriation exceeds the flow generated by the spring source.

### III.

The question of unappropriated water at the source may be a moot point, if it is found that the flows produced by the springs are tributary to a fully appropriated, decreed system. The Office of the State Engineer contains the complete history of water right filings for the springs in question. These records indicate that with the exception of the subject applications, no active water right filings exist at these sources.<sup>5</sup> However, any search for existing water rights must not exclude any water rights that exist downstream from the area being examined. Report of Field Investigation #1051 presents information to support the contention that the spring flow from the proposed points of diversion are tributary to Long Valley Creek whose waters commingle with Lousetown Creek prior to its confluence with the Truckee River. Due to its status as a fully appropriated, decreed system, no additional appropriations of water can be considered for surface water sources, which are determined to be tributary to the Truckee River. The State Engineer finds that Applications 70394, 70395 and 70396 request appropriations of water from springs, which are tributary to the Truckee River; therefore, their approval would have an adverse effect upon existing decreed rights.

### IV.

It was noted in the field report that the springs in question represent an important source of water for the wildlife of the area. Under the provisions found within NRS § 533.367, before a person may obtain a right to the use of water from a spring or water, which has seeped to the surface of the ground, he must ensure that wildlife, which customarily uses the water will have access to it. Given the modest amount of flow generated by Spring #1, Spring #2 and Spring #4, the State Engineer finds that any

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<sup>5</sup> The record of water right filings for a specific Township and Range are depicted upon what is referred to as, "Township Cards", which are contained within the records of the Office of the State Engineer.

additional appropriations of water from these sources would jeopardize their value as a vital source of water for wildlife.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>6</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>7</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.

Applications 70394, 70395 and 70396 request appropriations of water from a series of springs, which exceed the amount of water that the springs are currently producing. The State Engineer concludes that there is insufficient water at the proposed points of diversion to support the manner of use proposed by the subject applications.

It has been determined through field observations and an examination of the records of the State Engineer that the sources in question contribute an unquantified amount of water to a watershed, which is tributary to the Truckee River. The State Engineer concludes that to capture this flow and pipe it to a distant place of use as envisioned by the applicant would conflict with existing decreed water rights, which appropriate water from the Truckee River.

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<sup>6</sup> NRS chapter 533.

<sup>7</sup> NRS § 533.370(4).

**IV.**

The State Engineer concludes that the approval of Applications 70394, 70395 and 70396 would adversely impact the value of these springs as a source of water for the areas wildlife, contrary to the provisions of NRS § 533.367.

**RULING**

Applications 70394, 70395 and 70396 are hereby denied on the grounds that there is insufficient water available at their proposed points of diversion, their approval would conflict with existing water rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/MDB/jm

Dated this 21st day of  
October, 2004.