

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

IN THE MATTER OF APPLICATION 70829)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF GRUDEN SPRINGS WITHIN)
THE SNAKE VALLEY HYDROGRAPHIC)
BASIN (195), WHITE PINE COUNTY,)
NEVADA.)

RULING
6030

GENERAL

I.

Application 70829 was filed on January 20, 2004, by Donald A. Duff, Snake Creek Ranch to appropriate 0.4 cubic feet per second (cfs) of water from Gruden Springs. The proposed manner of use is for irrigation and domestic purposes. The proposed place of use is described as being located within portions of the N½ NE¼, and portions of the NE¼ NW¼ of Section 16, portions of the S½ SE¼, and portions of the SE¼ SW¼ of Section 9, T.12N., R.70E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 16, T.12N., R.70E., M.D.B.&M.¹

II.

Application 70829 was timely protested on March 18, 2004, by Gonder Ranch, Wheeler Service and Baker Ranches, Inc., on the grounds that water rights have been issued on Snake Creek by Utah and the Protestants believe that Gruden Springs is tributary to Snake Creek.

FINDINGS OF FACT

I.

Application 7475 was filed on August 10, 1925, by Joe Gruden to appropriate 0.8795 cfs of water for the irrigation of 87.95 acres from Gruden Springs. The proposed manner of use was for irrigation and domestic purposes. The proposed place of use was within portions of Sections 9 and 16, T.12N., R.70E., M.D.B.&M. The proposed point of diversion was described as being located within the NW¼ SE¼ of Section 16, T.12N., R.70E., M.D.B.&M. Application 7475 was approved on June 27, 1926, for 0.8795 cfs and a review of the file shows the Permittee wrote to the State Engineer and stated Gruden Springs had gone dry for the last ten years. Subsequently, the Permittee failed to file an extension of time as required in the terms of the permit and Permit

¹ File No. 70829, official records in the Office of the State Engineer.

7475 was cancelled by the State Engineer on April 6, 1942, for failure to comply with the provisions of the permit.²

The State Engineer finds Application 70829 seeks to re-establish a water right permit on the waters of Gruden Springs and with the cancellation of Permit 7475, there are no active water rights at the source.

II.

A formal field investigation was held by personnel of the Office of the State Engineer at 11:00 a.m. on May 19, 2008. In attendance were:

Ken Haffey, Staff Engineer, Nevada Division of Water Resources
Richard Perry, Staff Engineer, Nevada Division of Water Resources
Danny Zampirro, Engineering Technician III, Nevada Division of Water Resources
Scott Miller, Nevada Department of Wildlife
Don Duff, Snake Creek Ranch, Applicant
Buck Douglas, Applicant's associate
Owen Gonder, protestant and rancher
Chris Wheeler, protestant and rancher
Darwin Wheeler, protestant and rancher
Dean Baker, protestant and rancher
Tom Baker, protestant and rancher
Craig Baker, protestant and rancher
Robin Crouch, Hidden Valley resident

The investigation began with the Applicant outlining the scope of the project, which includes establishing a native riparian habitat on the place of use. The Applicant has cleared approximately 25 acres of existing sagebrush and has planted range grasses to establish a riparian habitat. The Applicant has reworked the system of ditches and installed an irrigation system within the meadow to enhance the existing flow to the meadow.³ The diversion works and use of water from Gruden Springs were done by the Applicant prior to obtaining a water right permit, as required by Nevada water law.⁴

At the field investigation and by letter of April 12, 2009, the Applicant stated that the native grasses will consume less water than the existing vegetation that was removed. The protestants did not agree with this point.

Protestant Baker presented a copy of the Snake Creek Decree, which was adjudicated in the State of Utah on May 17, 1910, between Geroge W. Gonder, Elsie R. Gonder, and Thomas

² File No. 7475, official records in the Office of the State Engineer.

³ Report of Field Investigation No. 1100, dated August 5, 2008, official records in the Office of the State Engineer.

⁴ NRS § 533.325.

D. Deardon, Jr., Plaintiffs, v. John Doe. (otherwise unknown) Defendant. The Decree awarded "...the plaintiffs herein are the exclusive owners of the right to the uses of all the waters of said Snake Creek for irrigation purposes, from March 1st, until November 15th, in each and every year..."³

Protestant Gonder gave a historical review of the area stating he was familiar with the area for about 60 years. At various times the area has been primarily used for grazing stock. He did state that to his knowledge the spring appurtenant to the point of diversion or lower spring did flow on the surface into Snake Creek. The spring that is located upslope and northwest from the point of diversion was used to irrigate the historic orchard, of which some is still active.³

The State Engineer finds that Gruden Springs historically did flow into Snake Creek and water from the spring cannot be appropriated in the manner sought by the Applicant.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit to appropriate public waters where:⁶

- 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 the Protestants' concerns regarding Snake Creek are upheld as the evidence indicates there is both historic and current surface flow from Gruden Springs into Snake Creek.

IV.

The Utah decree awarded "...the plaintiffs herein are the exclusive owners of the right to the uses of all the waters of said Snake Creek for irrigation purposes, from March 1st, until November 15th, in each and every year..." The State Engineer concludes that Gruden Springs is

⁵ NRS Chapter 533.

⁶ NRS § 533.370(5).

tributary to the Snake Creek system, and approving Application 70829 will interfere with the decreed rights of the Protestants between March 1st and November 15th, of each year.

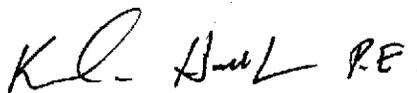
V.

The State Engineer concludes that the Applicant must remove any works of diversion that would interfere with the decreed water rights of Snake Creek.

RULING

The protests are upheld and Application 70829 is hereby denied on grounds it would conflict with existing decreed rights.

Respectfully submitted,



TRACY TAYLOR, P.E.

for State Engineer

Dated this 17th day of

March, 2010.