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

IN THE MATTER OF APPLICATION 76687 FILED TO APPROPRIATE THE PUBLIC WATERS OF AN UN-NAMED SPRING WITHIN THE PILOT CREEK VALLEY HYDROGRAPHIC BASIN (191), ELKO COUNTY, NEVADA.	)	**RULING** **#6049**

GENERAL

I.

Application 76687 was filed on January 30, 2008, by Gene J. Ghiggia and Betty A. Ghiggia to appropriate 0.045 cubic feet per second, not to exceed 32.26 acre-feet annually, of water from an unnamed spring to irrigate 8.065 acres of Christmas trees within the NE¼ SW¼ of Section 35, T.37N., R.69E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of said Section 35.[1]

II.

Application 76687 was timely protested by the J. R. Simplot Company, the successor in interest by merger to Simplot Land and Cattle Company on the following grounds:[1]

> Historically the protestant and its predecessors have used the source identified in application no. 76687 to water livestock and for other purposes pursuant to a vested claim identified as Nevada Division of Water Resources claim no. V04105. On July 23, 2004, Ghiggia applied with the State Engineer to appropriate up to 0.05 cfs for domestic use from the same source as identified under the protestant's vested claim no. 04105. After receiving permit no. 71491 on February 4, 2005 from the State Engineer for the July 23, 2004 application, Ghiggia disconnected the diversion historically used by the protestant to divert water from the source identified under claim no. V04105. Water historically transported through a ditch and pipeline to the protestant's livestock watering troughs has not been available for use by the protestant since that time. For this reason, the protestant objects to this application and to Ghiggia's water use under the previous permit no. 71491 until such time as Ghiggia acknowledges the prior appropriation by the protestant and allows the uninterrupted use of water from the spring identified under claim no. V04105 for use by the protestant to water livestock.

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[1] File No. 76687, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Nevada Revised Statue § 533.365 provides that is within the State Engineer's discretion whether or not to hold an administrative hearing as to any particular protested water right application. The State Engineer finds that he has sufficient information available to review the application and protest and a hearing in this matter is not necessary.

II.

Staff from the Office of the State Engineer conducted a field investigation on July 7, 2009.[2] The field investigation, along with subsequent research and correspondence, revealed the following findings:[1]

1. The spring source in question is on land owned by the Ghiggias as per document 504606 filed in the Elko County Recorder's office on August 15, 2003.
2. At the time the investigator inspected the water source in question, no evidence of tampering or impedance of water flow leading to the Simplot property could be found.
3. Evidence of use in the manner claimed by V04105 was apparent. The vested claim has senior priority and is entitled to be satisfied prior to any other rights on this source.
4. Flow measurements indicate that there is unappropriated water at the source in the amount of up to 12 gallons per minute, or approximately 19.3 acre-feet annually.
5. The April 1, 2010, letter from the Ghiggias, indicate a revised estimated annual use for drip irrigation of 1,000 Christmas trees over the 8.065 acre place of use for Application 76687 as being 10.0 acre-feet annually.

III.

A significant portion of the protest against Application 76687 deals with concerns that the Protestant's senior rights are not recognized by the Applicant, and that some assurance of this recognition of the Protestant's senior rights must be provided by the Applicant.

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[2] Field Investigation No.1126, dated February 16, 2010, official records in the Office of the State Engineer.

The priority of right definition states that "Priority in time of appropriating water gives the better right."[3] The State Engineer administers Nevada Water Law by the doctrine of "first in time, first in right" or by the priority of appropriation. The State Engineer finds that the field investigation showed the Protestant's senior claimed water right is being satisfied and additional water from the spring source is available for appropriation.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[4]

II.

The State Engineer is prohibited by law from granting a permit for an application to appropriate the public waters where:[5]

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.

The State Engineer concludes that there is unappropriated water at the source, so long as Application 76687 is permitted with the reduced duty of 10.0 acre-feet annually.

IV.

The Protestant's water rights are being satisfied and unappropriated water is available at the source over and above the requirements of vested claim V04105. The State Engineer concludes that approval of Application 77647 will not conflict with existing rights.

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[3] Wells A. Hutchins, LL.B. *The Nevada Law of Water Rights, Carson City, Nevada, State Engineer of Nevada, 1965.*
[4] NRS Chapter 533.
[5] NRS § 533.370(5).

RULING

The protest is hereby overruled and Application 77647, with the requested duty reduced to 10.0 acre-feet annually, is hereby approved subject to existing rights and the payment of the statutory permit fees.

Respectfully submitted,

JASON KING, P.E.
State Engineer

Dated this 15th day of

July, 2010.