

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

APPLICATION 46212 FILED TO)
APPROPRIATE THE PUBLIC)
WATERS OF GOSHUTE CREEK)
WITHIN THE STEPTOE VALLEY)
HYDROGRAPHIC BASIN (179),)
WHITE PINE COUNTY, NEVADA.)

RULING
5283

GENERAL

I.

Application 46212 was filed on October 8, 1982, by Dave Carter and Guy Tipton to appropriate 5.0 cubic feet per second (cfs) from Goshute Creek for irrigation and domestic purposes for the irrigation of 480 acres within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 17, N $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, and the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 21, all within T.25N., R.64E., M.B.D.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T.25N., R.63E., M.D.B.&M.¹

II.

Application 46212 was timely protested by the Nevada Department of Wildlife, with a portion of the protest following:

This application for a water right is being protested on the basis of a prior application filed by the State of Nevada, Department of Fish and Game (Nevada Department of Wildlife). The original application number was 27632. On March 4, 1977 the Department received a Certificate of Appropriation (certificate record number 8978, book 29, page 8978) for 1.0 cfs from January 1 to December 31 of each year on Goshute Creek.

Application number 46212 is proposing to divert water within the area of prior appropriation. A 5.0 cfs diversion of water for irrigation would completely dry up the natural channel for a major portion of the year. The prior certificate of appropriation states that 1.0 cfs will be allowed to flow in its natural stream

¹ File No. 46212, official records in the Office of the State Engineer.

channel through small ponds and numerous stream check structures where it is used for fish, wildlife, and recreation purposes. We feel the current application would seriously jeopardize or eliminate the intended appropriated use for wildlife. . . . There are periods that natural flows are low without diversions and 1.0 cfs can only be considered to be the minimal flow needed for the survival of the resident fish population. . . . The granting of application number 46212 would have an adverse environmental impact and would not be in the public interest.

FINDINGS OF FACT

I.

The State Engineer finds that the protestant to Application 46212 is the owner of record of Permit 27632, Certificate 8978, which appropriates 1.0 cfs of water from Goshute Creek, the place of use being approximately 4.5 miles of Goshute Creek, and the manner of use being for fish, wildlife and recreation purposes. The State Engineer also finds that Permit 27632, Certificate 8978 is the only appropriated water right on Goshute Creek.²

II.

The State Engineer finds that the proposed point of diversion of Application 46212 on Goshute Creek is within the 4.5 mile place of use of Permit 27632, Certificate 8978, on Goshute Creek, with this proposed point of diversion being approximately 1.5 miles from the downstream side of the above 4.5 mile portion of Goshute Creek.¹

III.

The State Engineer finds that the United States Geological Survey (USGS) previously maintained a gauging station, Number 10245040, on Goshute Creek located approximately 700 feet downstream of the proposed point of diversion of Application 46212.¹

² File No. 27632, official records in the Office of the State Engineer.

IV.

The State Engineer finds that the stream flow data from the USGS Gauging Station Number 10245040 on Goshute Creek for the period January 1983 to July 1986, indicates that if Application 46212 were approved for 5.0 cfs for that period Goshute Creek would have been dry for approximately 9.2 months per year downstream from the point of diversion of Application 46212.¹ The State Engineer further finds that same period of time was a wet period in Nevada.³

The State Engineer finds if the stream cannot provide sufficient water during a wet period of time it certainly cannot do so during dry or average periods.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting 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 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 there is insufficient flow in Goshute Creek at the proposed point of diversion of Application 46212 to meet the cfs demands of Permit 27632, Certificate 8978, and Application 46212.

³ Water Supply Outlook for Nevada, U.S. Dept. of Agriculture & Nev. Dept. of Conservation and Natural Resources, 1984, 1985, 1986.

⁴ NRS chapter 533.

⁵ NRS § 533.370(3).

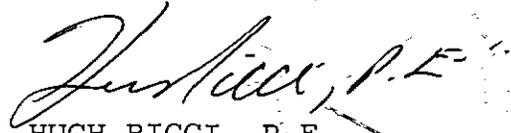
IV.

The State Engineer concludes that the granting of Application 46212 would conflict with Permit 27632, Certificate 8978.

RULING

Application 46212 is hereby denied on the grounds that there is insufficient water in the stream to accommodate Application 46212 and that granting said application would conflict with existing surface water rights.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/RAD/jm

Dated this 30th day of
September, 2003.