

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

IN THE MATTER OF APPLICATIONS 70389,)
70458, 70475, 70476 AND 70477 FILED TO)
CHANGE THE PLACE AND MANNER OF)
USE, AND APPLICATION 70478 FILED TO)
CHANGE THE POINT OF DIVERSION,)
PLACE AND MANNER OF USE OF WATER)
PREVIOUSLY APPROPRIATED WITHIN THE)
FISH LAKE VALLEY HYDROGRAPHIC)
BASIN (117), ESMERALDA COUNTY,)
NEVADA.)

RULING

#5432

GENERAL

I.

Application 70389 was filed on September 5, 2003, by James R. Boyce to change the place and manner of use of 0.226 cubic feet per second (cfs), not to exceed 96 acre-feet annually, of surface water previously appropriated under Permit 3159, Certificate 1878. The source of water is Perry Aiken Creek and the proposed and existing use is irrigation. Application 70389 proposes to change the period of use from April 1 to November 1 of each year to January 1 to December 31. The point of diversion is described as being located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, T.2S., R.35E., M.D.B.&M. The proposed place of use is described as being located within a portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, W $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, T.2S., R.35E., M.D.B.&M., and the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 2 and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3, T.3S., R.35E., M.D.B.&M.¹

II.

Application 70458 was filed on September 30, 2003, by James R. Boyce to change the place and manner of use of 15 cfs, not to exceed 1443.95 acre-feet annually, of surface water previously appropriated under Permit 20040, Certificate 6559. The source of water is Leidy (a.k.a. Robinson) Creek and the proposed and existing use is irrigation. Application 70458 proposes to change the period of use from May 1 to September 30 of each year to January 1 to December 31. The point of diversion is described as being located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T.2S., R.35E., M.D.B.&M. The proposed place of use is described as being located within the S $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ and a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, SW $\frac{1}{4}$ of

¹ File No. 70389, official records in the Office of the State Engineer.

Section 23, W $\frac{1}{2}$ of Section 26, all of Section 27, a portion of the E $\frac{1}{2}$ of Section 28, a portion of the E $\frac{1}{2}$ of Section 33, all of Section 34, T.2S., R.35E., M.D.B.&M., and the N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, and the E $\frac{1}{2}$ NE $\frac{1}{4}$, a portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$, a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and a portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T.3S., R.35E., M.D.B.&M.²

III.

Application 70475 was filed on September 30, 2003, by James R. Boyce to change the place and manner of use of 1926.03 acre-feet annually of the water previously appropriated under V-01312 from Leidy (a.k.a. Robinson) Creek. Application 70475 proposes to change the period of use from "As Decreed" to January 1 to December 31 and proposes to change the manner of use from irrigation, stockwater and domestic to irrigation. The point of diversion is described as being located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T.2S., R.35E., M.D.B.&M. The proposed place of use is described as being located within the S $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ and a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, SW $\frac{1}{4}$ of Section 23, W $\frac{1}{2}$ of Section 26, all of Section 27, a portion of the E $\frac{1}{2}$ of Section 28, portion of the E $\frac{1}{2}$ of Section 33, all of Section 34, T.2S., R.35E., M.D.B.&M., and the N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, and the E $\frac{1}{2}$ NE $\frac{1}{4}$, a portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$, a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and a portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T.3S., R.35E., M.D.B.&M.³

IV.

Application 70476 was filed on September 30, 2003, by James R. Boyce to change the place and manner of use of 1.16 cfs, not to exceed 585 acre-feet annually, of surface water previously appropriated under Permit 2889, Certificate 1881. The source of water is Leidy (a.k.a. Robinson) Creek and the proposed and existing use is irrigation. Application 70476 proposes to change the period of use from March 15 to November 30 to January 1 to December 31. The point of diversion is described as being located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T.2S., R.35E., M.D.B.&M. The proposed place of use is described as being located within the S $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ and a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, SW $\frac{1}{4}$ of Section 23, W $\frac{1}{2}$ of Section 26, all of Section 27, a portion of the E $\frac{1}{2}$ of Section 28, a portion of the E $\frac{1}{2}$ of Section 33, all of Section 34, T.2S., R.35E., M.D.B.&M., and the N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, and the E $\frac{1}{2}$ NE $\frac{1}{4}$, a portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$, a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and a portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T.3S., R.35E., M.D.B.&M.⁴

² File No. 70458, official records in the Office of the State Engineer.

³ File No. 70475, official records in the Office of the State Engineer.

⁴ File No. 70476, official records in the Office of the State Engineer.

V.

Application 70477 was filed on September 30, 2003, by James R. Boyce to change the place and manner of use of 0.246 cfs, not to exceed 73.8 acre-feet annually, of surface water previously appropriated under Permit 3158, Certificate 747. The source of water is Leidy (a.k.a. Robinson) Creek and the proposed and existing use is irrigation. Application 70477 proposes to change the period of use from April 1 to November 1 to January 1 to December 31. The point of diversion is described as being located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T.2S., R.35E., M.D.B.&M. The proposed place of use is described as being located within the S $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ and a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, SW $\frac{1}{4}$ of Section 23, W $\frac{1}{2}$ of Section 26, all of Section 27, a portion of the E $\frac{1}{2}$ of Section 28, a portion of the E $\frac{1}{2}$ of Section 33, all of Section 34, T.2S., R.35E., M.D.B.&M., and the N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, and the E $\frac{1}{2}$ NE $\frac{1}{4}$, a portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$, a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and a portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T.3S., R.35E., M.D.B.&M.⁵

VI.

Application 70478 was filed on September 30, 2003, by James R. Boyce to change the point of diversion, place and manner of use of 0.12 cfs, not to exceed 10.7 acre-feet annually, of surface water previously appropriated under Permit 3225, Certificate 2487. The source of water is Leidy (a.k.a. Robinson) Creek and the proposed and existing use is irrigation. Application 70478 proposes to change the period of use from April 1 to May 15 to January 1 to December 31. The proposed point of diversion is described as being located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T.2S., R.35E., M.D.B.&M. The proposed place of use is described as being located within the S $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ and a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, SW $\frac{1}{4}$ of Section 23, W $\frac{1}{2}$ of Section 26, all of Section 27, a portion of the E $\frac{1}{2}$ of Section 28, a portion of the E $\frac{1}{2}$ of Section 33, all of Section 34, T.2S., R.35E., M.D.B.&M., and the N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, and the E $\frac{1}{2}$ NE $\frac{1}{4}$, a portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$, a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and a portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T.3S., R.35E., M.D.B.&M.⁶

VII.

The U.S. Bureau of Land Management timely protested Change Applications 70389, 70458, 70475, 70476, 70477 and 70478 as follows:¹⁻⁶

The U.S. Bureau of Land Management (BLM) is the legal entity to manage public lands for the purposes intended by the Federal Land Management and Policy Act (FLPMA). FLPMA mandates multiple use which is defined as

⁵ File No. 70477, official records in the Office of the State Engineer.

⁶ File No. 70478, official records in the Office of the State Engineer.

“the management of public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.” The applicant has no authorization to use or develop BLM administered lands appurtenant to the beneficial use of water under this application. BLM may withdrawal [sic] the protest if authorization is obtained for all water conveyance structures that impact public lands administered by the BLM.

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.365(3) provides that it is within the State Engineer’s discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to change the public waters of the State of Nevada. The State Engineer finds that a hearing is not necessary to consider the merits of the protests filed by the BLM.

II.

The State Engineer finds that the points of diversion or proposed point of diversion of the above-listed change applications are located on public lands under the jurisdiction of BLM, and that the place of use is located on private land. The State Engineer finds that every application and change application permitted by the State Engineer includes two permit terms that adequately address the issue specified in the subject protest. These permit terms are that the permit does not extend the permittee the right of ingress and egress on public, private or corporate lands, and the issuance of the permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:⁸

- 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

⁷ NRS chapter 533.

⁸ NRS § 533.370(4).

D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the protests to Change Applications 70389, 70458 and 70475 through 70478, inclusive, present grounds that would not prohibit the granting of the change applications.

IV.

The State Engineer concludes the granting of Change Applications 70389, 70458 and 70475 through 70478, inclusive, will not conflict with existing rights nor threaten to prove detrimental to the public interest.

RULING

The protest to Change Applications 70389, 70458, 70475, 70476, 70477 and 70478 are hereby overruled and the applications are granted subject to:

- 1) existing rights;
- 2) the payment of statutory fees;
- 3) any permit issued will not extend the right of ingress or egress on public, private or corporate land; and
- 4) any permit issued will not waive the requirements to obtain other permits from State, Federal and local agencies.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/RAD/jm

Dated this 21st day of

October, 2004.