

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

IN THE MATTER OF APPLICATION )  
70192 FILED TO CHANGE THE POINT )  
OF DIVERSION, MANNER AND )  
PLACE OF USE OF THE PUBLIC )  
WATERS OF WILLOW CREEK )  
HERETOFORE APPROPRIATED BY )  
V00812, AND APPLICATION 70200 )  
FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF WILLOW )  
CREEK, BOTH WITHIN THE STEPTOE )  
VALLEY HYDROGRAPHIC BASIN )  
(179), WHITE PINE COUNTY, )  
NEVADA. )

**RULING**  
**#5476**

**GENERAL**

**I.**

Application 70192 was filed on July 3, 2003, by the State of Nevada, Division of State Lands for and on behalf of the Nevada Division of Wildlife to change the point of diversion, place of use and manner of use of 11.11 cubic feet per second (cfs) of the waters of Willow Creek previously appropriated under Claim V00812, Certificates 9, 10, 11, 12, 13 and 14, for wildlife and public recreation purposes within portions of the following five townships, T.14N., R.63E. and R.64E., T.15N., R.64E., T.16N., R.63E., and R.64E., all M.D.B.&M, and more specifically described in Exhibit "A" attached. The proposed point of diversion is described as being located within the NE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> of Section 36, T.14N., R.63E., M.D.B.&M.<sup>1</sup>

**II.**

Application 70200 was filed on July 3, 2003, by the State of Nevada, Division of State Lands for and on behalf of the Nevada Division of Wildlife, to appropriate 30.0 cfs of the waters of Willow Creek and tributaries (unappropriated waters) for wildlife and public recreation purposes within portions of the following five townships, T.14N., R.63E. and R.64E., T.15N., R.64E., T.16N., R.63E., and R.64E., all M.D.B.&M., and

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<sup>1</sup> File No. 70192, official records in the Office of the State Engineer.

more specifically described in Exhibit "A" attached. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 36, T.14N., R.63E., M.D.B.&M.<sup>2</sup>

### III.

Application 70192 was timely protested by Robert Hoffman requesting that the application be denied on the following grounds:

Drought conditions have lowered water flows from existing wells and springs in the area and issuance of this Permit will adversely effect the existing water rights, natural vegetation and wildlife in the area. Change of these waters permitted use and Point of Diversion will interfere with the existing use by the area and Willow Creek Ranch which has used water from Willow Creek since early 1879 for stockwatering and farming. Diversion of this much water will dry the creek for the area.<sup>1</sup>

### IV.

Application 70200 was timely protested by Robert Hoffman requesting that the application be denied on the following grounds:

Drought Conditions have lowered water flows from existing wells and springs in the area and issuance of this Permit will adversely effect the existing water rights in the area. Issuance of this permit will interfere with natural water flow that has enriched the surrounding area, wildlife and Willow Creek Ranch that has been used and depended upon since early 1879. Diversion of this much water will dry the creek for the area.<sup>2</sup>

## 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 appropriate the public waters of the State of Nevada. The State Engineer finds, based on the protest issues above, that a hearing is not necessary.

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<sup>2</sup> File No. 70200, official records in the Office of the State Engineer.

## II.

Application 70192 was filed to change the point of diversion, place of use, and manner of use of existing water rights under vested claim V-0812. The application does not seek to appropriate any additional water from Willow Creek, than already allowed under the vested claim. The manner of use under Application 70192 would change from irrigation to wildlife and recreation. This change in manner of use will increase the amount of secondary recharge to the groundwater aquifer, as water uptake by harvested crops would be reduced. The point of diversion is being changed approximately 5 miles upstream to facilitate the installation of a stream gage at the southwestern boundary of the wildlife refuge. From this new point of diversion, water would continue to be subject to the same priorities that currently exist on this stream system.<sup>1</sup>

The State Engineer finds that there is no factual support for the allegation of the protest that the granting of Application 70192 will affect existing water rights in the area.

## III.

Application 70200 was filed for 30 cfs for the purpose of capturing any unappropriated water on Willow Creek and its tributaries. This excess water, sometimes referred to as flood waters, generally occurs during spring runoff and exceeds the amount of water necessary to satisfy existing rights on the stream system downstream of the point of diversion. A review of records on file in the Office of the State Engineer show two claims of vested rights downstream of the proposed point of diversion of Application 70200. Vested claim V-02068 is for a diversion rate of 0.05 cfs and vested claim V-02234 is for 0.25 cfs, both for stockwatering purposes. The applicant, either under Application 70192 if approved or vested claim V-0812, is entitled to 11.11 cfs.<sup>2</sup> Therefore, the total of all surface water rights on the stream system at and downstream of the proposed point of diversion is 11.11 cfs plus 0.25 plus 0.05 cfs, for a total appropriation of 11.41 cfs.

The State Engineer finds that Application 70200 can be approved to utilize any Willow Creek and tributaries water in excess of 11.41 cfs, up to a maximum of 41.41 cfs, as measured at the proposed point of diversion.

#### IV.

Applications 70192 and 70200, if approved, would have a point of diversion upstream of Willow Creek Ranch. The protestant has indicated that Willow Creek Ranch has used and depended upon this water source. A review of records on file in the Office of the State Engineer show the protestant has no water right, pending application, or claim of vested right to beneficially use the water of Willow Creek. The protestant is the owner of water right Permit 53348 to use water from an underground source (well) for irrigation purposes on Willow Creek Ranch.<sup>1,2</sup>

The State Engineer finds the protestant has no water right or pending application to the waters of Willow Creek.

#### V.

The protestant stated in his protest that drought conditions have lowered water flows from existing wells and springs in the area and approval of Applications 70192 and 70200 will adversely affect existing rights. There is no question that drought conditions can affect wells and springs; however, the State Engineer has no control over the amount of precipitation a particular area of the state may receive in a given water year. In this case, Application 70192 is a change application of an existing water right; therefore, no additional water will be appropriated from the stream source. Application 70200 is for the floodwaters of Willow Creek and tributaries. If drought conditions exist such that existing rights cannot be satisfied on the stream system, no water would be utilized under Application 70200.

The State Engineer finds that drought conditions, when they exist, are beyond the control of the State Engineer and the nature of these pending applications is such that their approval is independent of drought conditions.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</sup>

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<sup>3</sup> NRS chapters 533 and 534.

**II.**

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>4</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 interest 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.**

Before either approving or rejecting an application the State Engineer may require such additional information as will enable him to properly guard the public interest.<sup>5</sup>

**IV.**

The State Engineer concludes that none of the issues specified in the protest to Applications 70192 and 70200 are supported by the facts.

**V.**

The State Engineer concludes that the granting of Applications 70192 and 70200 will not conflict with any existing rights nor threaten to prove detrimental to the public interest.

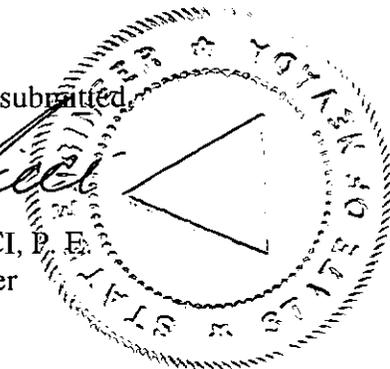
**RULING**

The protest to Applications 70192 and 70200 are hereby overruled and Applications 70192 and 70200 are granted subject to existing rights and the payment of statutory fees.

Respectfully submitted,



HUGH RICCI, P. E.  
State Engineer



HR/RAD/jm

Dated this 2nd day of  
February, 2005.

<sup>4</sup> NRS § 533.370(4).

<sup>5</sup> NRS 533.375.

**EXHIBIT "A"**  
**PROPOSED PLACE OF USE, WILLOW CREEK & TRIBUTARIES**

<u>DIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
SE 1/4 (Portion)	25	14N	63E	M.D.B.&M.
ALL	27	14N	64E	M.D.B.&M.
ALL	28	14N	64E	M.D.B.&M.
ALL	29	14N	64E	M.D.B.&M.
NW 1/4 (Portion)	30	14N	64E	M.D.B.&M.
NE 1/4	30	14N	64E	M.D.B.&M.
SW 1/4	30	14N	64E	M.D.B.&M.
SE 1/4	30	14N	64E	M.D.B.&M.
NW 1/4 (Portion)	19	14N	64E	M.D.B.&M.
NE 1/4	19	14N	64E	M.D.B.&M.
SW 1/4 (Portion)	19	14N	64E	M.D.B.&M.
SE 1/4	19	14N	64E	M.D.B.&M.
ALL	20	14N	64E	M.D.B.&M.
ALL	21	14N	64E	M.D.B.&M.
ALL	22	14N	64E	M.D.B.&M.
ALL	15	14N	64E	M.D.B.&M.
ALL	16	14N	64E	M.D.B.&M.
ALL	17	14N	64E	M.D.B.&M.
NE 1/4 (Portion)	18	14N	64E	M.D.B.&M.
SW 1/4 (Portion)	18	14N	64E	M.D.B.&M.
SE 1/4 (Portion)	18	14N	64E	M.D.B.&M.
NE 1/4 (Portion)	7	14N	64E	M.D.B.&M.
SE 1/4 (Portion)	7	14N	64E	M.D.B.&M.
ALL	8	14N	64E	M.D.B.&M.
ALL	9	14N	64E	M.D.B.&M.
ALL	10	14N	64E	M.D.B.&M.
ALL	3	14N	64E	M.D.B.&M.
ALL	4	14N	64E	M.D.B.&M.
ALL	5	14N	64E	M.D.B.&M.

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**EXHIBIT "A"**  
**PROPOSED PLACE OF USE, WILLOW CREEK & TRIBUTARIES**

<u>DIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
NE 1/4 (Portion)	6	14N	64E	M.D.B.&M.
SE 1/4 (Portion)	6	14N	64E	M.D.B.&M.
NE 1/4 (Portion)	31	15N	64E	M.D.B.&M.
SE 1/4 (Portion)	31	15N	64E	M.D.B.&M.
NW 1/4	32	15N	64E	M.D.B.&M.
SW 1/4	32	15N	64E	M.D.B.&M.
NW 1/4 NE 1/4	32	15N	64E	M.D.B.&M.
SW 1/4 NE 1/4	32	15N	64E	M.D.B.&M.
NW 1/4 SE 1/4	32	15N	64E	M.D.B.&M.
SW 1/4 SE 1/4	32	15N	64E	M.D.B.&M.

COUNTY ENGINEER'S OFFICE

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**EXHIBIT "A"**  
**PROPOSED PLACE OF USE, WILLOW CREEK & TRIBUTARIES**

DIVISION				SECTION	TOWNSHIP	RANGE	MERIDIAN
NE	1/4	NE	1/4	32	15N	64E	M.D.B.&M.
SE	1/4	NE	1/4	32	15N	64E	M.D.B.&M.
NE	1/4	SE	1/4	32	15N	64E	M.D.B.&M.
SE	1/4	SE	1/4	32	15N	64E	M.D.B.&M.
ALL				33	15N	64E	M.D.B.&M.
SW	1/4			28	15N	64E	M.D.B.&M.
NW	1/4	NW	1/4	28	15N	64E	M.D.B.&M.
SW	1/4	NW	1/4	28	15N	64E	M.D.B.&M.
NW	1/4	SE	1/4	28	15N	64E	M.D.B.&M.
SW	1/4	SE	1/4	28	15N	64E	M.D.B.&M.
NW	1/4	NE	1/4	29	15N	64E	M.D.B.&M.
NE	1/4	NE	1/4	29	15N	64E	M.D.B.&M.
SE	1/4	NE	1/4	29	15N	64E	M.D.B.&M.
NE	1/4	SE	1/4	29	15N	64E	M.D.B.&M.
SE	1/4	SE	1/4	29	15N	64E	M.D.B.&M.
NW	1/4			20	15N	64E	M.D.B.&M.
SE	1/4			20	15N	64E	M.D.B.&M.
SW	1/4	NE	1/4	20	15N	64E	M.D.B.&M.
SW	1/4			21	15N	64E	M.D.B.&M.
NW	1/4	SW	1/4	14	15N	64E	M.D.B.&M.
NE	1/4	SW	1/4	14	15N	64E	M.D.B.&M.
SE	1/4	NW	1/4	14	15N	64E	M.D.B.&M.
SW	1/4	NE	1/4	14	15N	64E	M.D.B.&M.
SE	1/4	NE	1/4	14	15N	64E	M.D.B.&M.
NE	1/4	NE	1/4	14	15N	64E	M.D.B.&M.
NW	1/4	SW	1/4	15	15N	64E	M.D.B.&M.
NE	1/4	SW	1/4	15	15N	64E	M.D.B.&M.
NW	1/4	SE	1/4	15	15N	64E	M.D.B.&M.
NE	1/4	SE	1/4	15	15N	64E	M.D.B.&M.
NE	1/4	SW	1/4	16	15N	64E	M.D.B.&M.
NW	1/4	SE	1/4	16	15N	64E	M.D.B.&M.
NE	1/4	SE	1/4	16	15N	64E	M.D.B.&M.
SW	1/4	NW	1/4	16	15N	64E	M.D.B.&M.
SE	1/4	NW	1/4	16	15N	64E	M.D.B.&M.
SW	1/4	NE	1/4	16	15N	64E	M.D.B.&M.
SE	1/4	NE	1/4	16	15N	64E	M.D.B.&M.
NE	1/4	NE	1/4	16	15N	64E	M.D.B.&M.

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<u>DIVISION</u>		<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
SW	1/4	17	15N	64E	M.D.B.&M.
NW	1/4	17	15N	64E	M.D.B.&M.
NE	1/4	17	15N	64E	M.D.B.&M.
SE	1/4	7	15N	64E	M.D.B.&M.
NE	1/4	7	15N	64E	M.D.B.&M.
SW	1/4	8	15N	64E	M.D.B.&M.
NW	1/4	8	15N	64E	M.D.B.&M.
NW	1/4 NE 1/4	8	15N	64E	M.D.B.&M.
SW	1/4 NE 1/4	8	15N	64E	M.D.B.&M.
NW	1/4 SE 1/4	8	15N	64E	M.D.B.&M.
SW	1/4 SE 1/4	8	15N	64E	M.D.B.&M.
NW	1/4	5	15N	64E	M.D.B.&M.
SW	1/4	5	15N	64E	M.D.B.&M.
NW	1/4 NE 1/4	5	15N	64E	M.D.B.&M.
SW	1/4 NE 1/4	5	15N	64E	M.D.B.&M.
NW	1/4 SE 1/4	5	15N	64E	M.D.B.&M.
SW	1/4 SE 1/4	5	15N	64E	M.D.B.&M.
SE	1/4	6	15N	64E	M.D.B.&M.
NE	1/4	6	15N	64E	M.D.B.&M.
NW	1/4 NE 1/4	36	16N	63E	M.D.B.&M.
NE	1/4 NE 1/4	36	16N	63E	M.D.B.&M.
SE	1/4 NE 1/4	36	16N	63E	M.D.B.&M.
NE	1/4 SE 1/4	36	16N	63E	M.D.B.&M.
SE	1/4 SE 1/4	36	16N	63E	M.D.B.&M.
SE	1/4	25	16N	63E	M.D.B.&M.
NE	1/4	25	16N	63E	M.D.B.&M.
SE	1/4	24	16N	63E	M.D.B.&M.
NE	1/4 NW 1/4	24	16N	63E	M.D.B.&M.
SE	1/4 NW 1/4	24	16N	63E	M.D.B.&M.
NW	1/4 NE 1/4	24	16N	63E	M.D.B.&M.
SW	1/4 NE 1/4	24	16N	63E	M.D.B.&M.
NE	1/4 SW 1/4	24	16N	63E	M.D.B.&M.
SE	1/4 SW 1/4	24	16N	63E	M.D.B.&M.
NW	1/4	31	16N	64E	M.D.B.&M.
SW	1/4	31	16N	64E	M.D.B.&M.
SE	1/4	31	16N	64E	M.D.B.&M.
NW	1/4 NE 1/4	31	16N	64E	M.D.B.&M.
SW	1/4 NE 1/4	31	16N	64E	M.D.B.&M.
SE	1/4 NE 1/4	31	16N	64E	M.D.B.&M.

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<u>DIVISION</u>	<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>MERIDIAN</u>
NW 1/4 SW 1/4	32	16N	64E	M.D.B.&M.
SW 1/4 SW 1/4	32	16N	64E	M.D.B.&M.
SE 1/4 SW 1/4	32	16N	64E	M.D.B.&M.
SW 1/4	30	16N	64E	M.D.B.&M.
SW 1/4 NW 1/4	30	16N	64E	M.D.B.&M.

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