

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

IN THE MATTER OF APPLICATION 75607)
FILED TO APPROPRIATE THE PUBLIC)
WATERS FROM AN UNDERGROUND)
SOURCE WITHIN THE WHITE RIVER)
VALLEY HYDROGRAPHIC BASIN (207),)
WHITE PINE COUNTY, NEVADA.)

RULING

#5890

GENERAL

I.

Application 75607 was filed on April 19, 2007, by the White Pine Boys Ranch, LLC, to appropriate 0.2 cubic feet per second (cfs), not to exceed 10 acre-feet annually (afa) of water from an underground source for quasi-municipal and domestic purposes within the NW¼ NE¼ of Section 33, T.13N., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 33.¹

II.

Application 75607 was timely protested by Doug Carson on the following grounds:¹

This Protestant relies on the spring source making up Smith Creek stream flows which have been diminished over the last several years. Pumping from the proposed POD under Application No. 75607 will exacerbate the adverse impact of existing pumping under Permit No. 19981 and further adversely impact Protestant's existing rights as the proposed POD is located squarely up gradient and in very close proximity to the source of Protestant's existing rights.

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 a hearing is not necessary to consider the merits of the protest and rule on the application.

¹ File No. 75607, official records in the Office of the State Engineer.

II.

The source of water for the Protestant is from Smith Creek. Smith Creek currently serves Permit 7251, Certificate 1330 and Permit 70969, which both are held in the name of Douglas W. Carson, Trustee of the Douglas W. Carson Trust. Permit 7251 was issued September 14, 1925, for 1.2 cfs for the irrigation of 120 acres.² Certificate 1330 was issued February 11, 1928, for 0.4187 cfs for the irrigation of 41.87 acres from March 1st to October 15th of each year.² Permit 70969 was issued August 16th, 2007 for 0.34 cfs for an additional 33.8 acres of land to expand the 41.87 acres within the place of use certificated under Permit 7251, Certificate 1330, with a season of use also from March 1st to October 15th of each year.³

The White Pine Boys Ranch is situated on White Pine County Assessors Parcel Number 011-520-03 in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, T.13N., R.60E., M.D.B.&M. On December 10, 2005, a domestic well was drilled on this parcel, and the log for this well was submitted to the Office of the State Engineer and assigned number 99075. Subsequently, Application 75607 was filed on April 19, 2007, to appropriate 0.20 cfs from the same point of diversion to supply 10 afa for the Boys Ranch, which specifically was identified as a lodge, two dorms, gym, a horse arena and a playground area.

This well identified under log 99075 was drilled about 900 feet South Southeast from Warm Springs in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, T.13N., R.60E., M.D.B.&M. The State Engineer finds this well lies approximately 3 miles east of the Smith Creek Springs and there are no surface drainages that directly connect the well and the Smith Creek Springs, which is the source of water for the Protestant's water rights.

III.

The waters of Warm Springs are appropriated under Permit 29856, Certificate 10313. Certificate 10313 was issued on September 24, 1982, for 3.67 cfs, not to exceed 887.6 acre-feet annually for the irrigation of 221.9 acres. These waters flow down the Warm Springs channel, and are utilized for irrigation purposes from January 1st to December 31st of each year. The State Engineer finds the current holder of Permit 29856 is White River Ranch, LC.⁴

² File No. 7251, official records in the Office of the State Engineer.

³ File No. 70969, official records in the Office of the State Engineer.

⁴ File No. 29856, official records in the Office of the State Engineer.

IV.

The Protestant alleges that the pumping of ground water under Permit 19981, Certificate 6121 is interfering with his surface-water rights to Smith Creek. Permit 19981 was issued January 18, 1962, for 3.0 cfs for the irrigation of 300 acres from an underground source. Certificate 6121 was issued January 4, 1967, for 2.896 cfs, not to exceed 792.77 acre-feet annually, for the irrigation of 198.192 acres.⁵ The well, which is the point of diversion for Permit 19981, Certificate 6121 is identified as Well Log No. 6053, also known as "Gardner Well #1", which is located in the SW¼ NW¼ of Section 26, T.13N., R.60E., M.D.B.&M. The State Engineer finds the current holder of Permit 19981 is White River Ranch, LC.

V.

The State Engineer finds both the White River Ranch, LC and the White Pine Boys Ranch, LLC, are owned and operated by Charles M. Brown.

VI.

Current records of this office show that the White River Valley Hydrographic Basin has a perennial yield of 37,000 afa, and that this office has issued approximately 31,615 acre-feet of Active Annual Duty permits.⁶ The State Engineer finds that there is unappropriated water at the source sufficient to support the amount requested in Application 75607.

VII.

The Protestant contends that the spring sources making up Smith Creek stream flows have diminished over the last several years. Yet Application 70969 was submitted to this office by the Protestant, and recently permitted, for an additional 0.34 cfs from the Smith Creek Springs.

The recent application and its subsequent permitting for additional water from a source from which the last certificate was granted over 90 years ago and then filing a protest stating that this spring source has been diminished over the last several years is contradictory in nature. Should Smith Creek Springs flows been diminished to the point that they could no longer serve Permit 7251, Certificate 1330, then the Protestant should not have made an application for additional water under Application 70969.

⁵ File No. 19981, official records in the Office of the State Engineer.

⁶ Hydrologic basin abstract, official records in the Office of the State Engineer.

The State Engineer finds that Permit 19981 has been issued for over 45 years and that any adverse affects to Smith Creek Springs from the pumping of this source would have been reported long ago so this issue has no bearing on the examination of Application 75607.

The Protestant states that pumping from the proposed point of diversion under Application 75607 will adversely impact his existing rights as the proposed point of diversion is located squarely up gradient and in very close proximity to the source of his existing rights.

After examination of the United States Geologic Survey topographic maps, it has been determined that the proposed point of diversion under Application 75607 is located approximately 3 miles from Smith Creek Springs. Additionally, the amount requested in Application 75607 is only 10 acre-feet annually, which is a small quantity of water. To further expand this issue, the Protestant's rights on Smith Creek only extend from March 1st to October 15th of each year. Therefore, should Application 75607 be permitted, effectively less than 7.5 afa would be utilized during the time that the Protestant's Smith Creek rights are able to be exercised.

The State Engineer finds that due to the significant distance between the source of the Protestant's existing rights, and the proposed point of diversion under Application 75607, as well as the relatively small amount requested in Application 75607, the diversion of 10 afa will not adversely impact the Protestant's existing rights.

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 an application to appropriate the public water 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 chapters 533 and 534.

⁸ NRS § 533.370(5).

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

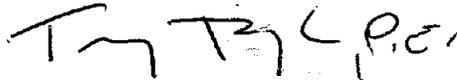
III.

Application 75607 requests approximately 10 afa of underground water from a point of diversion that is far removed from existing well sites that appropriate water from the White River Valley Hydrographic Basin. The State Engineer concludes that there is unappropriated water at the source sufficient to satisfy the minimal requirements of the requested appropriation and said appropriation will not conflict, interfere with, nor impair the value of existing rights nor threaten to prove detrimental to the public interest.

RULING

The protest to Application 75607 is hereby overruled and Application 75607 is hereby approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

HR/MS/jm

Dated this 17th day of
September, 2008.