

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

IN THE MATTER OF APPLICATION 67380)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF GRANITE COVE CREEK)
WITHIN THE BLACK ROCK DESERT)
VALLEY HYDROGRAPHIC BASIN (28),)
WASHOE COUNTY NEVADA.)

RULING

#5901

GENERAL

I.

Application 67380 was filed on March 27, 2001, by Bright-Holland Corporation to appropriate 1.0 cubic foot per second (cfs) of water from Granite Cove Creek for irrigation purposes. The proposed place of use is described as being 40 acres within the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 23, E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 26, T.33N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 23.¹

FINDINGS OF FACT

I.

An appropriation of 1.2 cfs of water from Granite Cove Creek exists under Permit 2660, Certificate 362, currently in the name of Joel R. Turnbow as beneficiary and Sherrill Don Guisasola as trustee. The certificated place of use is described as 50 acres within the S $\frac{1}{2}$ NE $\frac{1}{4}$, 40 acres within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and 30 acres within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, T.33N., R.23E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, T.33N., R.23E., M.D.B.&M. Permit 2660, Certificate 362 carries a priority date of March 11, 1913, and is for the irrigation of the certificated lands during a growing season from April 1st to October 1st of each year.²

II.

Claim of vested right V-09124 was made on the waters of Granite Cove Creek by Bright-Holland Corporation asserting an appropriation of 69.8 acre-feet per season of water from April 1st to October 31st for irrigation, domestic and stock water purposes with a priority date of April 1, 1894. The proposed place of use is described as being

¹ File No. 67380, official records in the Office of the State Engineer.

² File No. 2660, official records in the Office of the State Engineer.

3.07 acres within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, 5.19 acres within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, 6.07 acres within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and 3.12 acres within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, T.33N., R.23E., M.D.B.&M. The point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 23.³

III.

Prior to filing Application 67380, several observations and actions took place with respect to Granite Cove Creek which help establish the availability of water from the source.

- 1) June 18, 1913, staff of the Office of the State Engineer³ performed a field investigation prior to issuance of Permit 2660 and reported; "There is no evidence of any former use having been made from this creek. Applicant is now using all the water flowing in the creek (about 2 min. in.)."²
- 2) May 23, 2000, staff of the Office of the State Engineer performed a field investigation in response to a letter of complaint dated March 29, 2000, by Jola Ann Guisasola-Mott on behalf of the permittee. The report of field investigation dated June 6, 2000, concludes, in part; "I did not find clear and convincing evidence of continuous use of water from Granite-Cove Creek on the land claimed under Proof of Appropriation V-09124. The investigator did not find any evidence that would support the Doctrine of Relation Back. There is no evidence of continuous or recent use..." The field investigation reported that the flow of Granite Cove Creek was measured as 1.6 cfs at a culvert entrance on the northwest side of the road and 1.47 cfs near the mouth of Bowen Canyon.
- 3) July 7, 2000, Order 1163 is issued commanding that Bright-Holland Corporation "...cease and desist immediately the diversion and use of water from Granite Cove Creek..." until such a time as an adjudication had been completed.³
- 4) July 19, 2000, staff of the Office of the State Engineer performed a field investigation in follow-up of Order 1163. The report of field investigation dated August 30, 2000, concludes, in part: "Water is being diverted in defiance of State Engineer's Order 1163..." The field investigation reported

³ File No. V-09124, official records in the Office of the State Engineer.

that the flow of Granite Cove Creek was measured as 0.16 cfs near the mouth of Bowen Canyon.³

IV.

A "Petition for Order of Forfeiture and Abandonment" of the water right described by Permit 2660, Certificate 362, was filed dated April 27, 2001, on behalf of the Applicant.¹ The petition asserts that:

- 1) There are no diversion structures on Granite Cove Creek or evidence of same within the past ten years or recent past, and
- 2) Water that reaches the place of use under Permit 2660, Certificate 362, is allowed to flow, unattended, to the desert without attempt to place it to beneficial use for more than ten years, and
- 3) The only application of water to beneficial use on the place of use under Permit 2660, Certificate 362, has been from a well, and
- 4) "Motts have abandoned their rights to all water contained in Permit 2660 (Certificate 362), which has not been put to use."

V.

A field investigation was conducted in the matter of the Petition for Order of Forfeiture and Abandonment on September 11, 2001, by staff of the Office of the State Engineer. The report of field investigation dated November 8, 2001, concludes, in part; "The investigator did not find any evidence that support the willful abandonment or forfeiture of water from Granite Cove Creek under Permit 2660." The field investigation reported that the flow of Granite Cove Creek was estimated to be 0.1 cfs near the mouth of Bowen Canyon.

VI.

On behalf of the Applicant, Thiel Engineering Consultants (Thiel) filed the results of a study of the watershed from which Granite Cove Creek rises, being all of Hydrographic Basin 02-023, Granite Basin.¹ The State Engineer finds that the study methodology was developed for a dissimilar area and the calculations therein were not calibrated for Granite Basin; therefore, the results of the study were not considered.

VII.

Thiel filed on behalf of the Applicant results of a flow measurement study on Granite Cove Creek from January 11, 2002, to February 21, 2004. Thiel concluded that; "Based on the measurements taken, the average flow of the Granite Cove Creek at the weir has been 1.043 cfs (467.93 gpm)."¹ The State Engineer finds that an analysis of the same submitted measurements yields an approximate flow volume during the irrigation season of April 1 to October 1 of approximately 195.6 acre-feet in 2002 and 328.4 acre-feet in 2003.

VIII.

The State Engineer finds that the duty under Certificate 362 is 437.95 acre-feet per season based on the laws in effect at the time of certification and an irrigation season of April 1 to October 1 of each year (184 days).⁴

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁶

- 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.

IV.

The Applicant by and through his agent has provided information adequate to determine the reliable availability of water from Granite Cove Creek. The State Engineer concludes that the information submitted did not show that extra water was available for further appropriation.

⁴ Section 72, Chapter 128, Statutes of 1913.

⁵ NRS chapter 533.

⁶ NRS § 533.370(5).

V.

Numerous field investigations were conducted to determine water use and availability from Granite Cove Creek. Each of the investigations included either flow measurements or estimates of flow that did not approach the authorized diversion rate of Permit 2660, Certificate 362. The State Engineer concludes the use of water under this application would conflict with existing rights and thereby threaten to prove detrimental to the public interest.

RULING

Application 67380 is hereby denied on the grounds that its issuance would conflict with existing rights and threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/MJA/jm

Dated this 4th day of
November, 2008.