

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

IN THE MATTER OF APPLICATIONS 17723,)
19076, 25857, 26266, 79499, 79515 AND)
81071 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF BASSETT CREEK)
LOCATED WITHIN THE SPRING VALLEY)
HYDROGRAPHIC BASIN (184), WHITE)
PINE COUNTY, NEVADA.)

RULING
#6194

GENERAL

I.

Application 17723 was filed on November 21, 1958, by Mrs. Richard Bate c/o George Eldridge, and later assigned to George Eldridge and Son, Inc., to appropriate 10.0 cubic feet per second (cfs) of water from Bassett Creek for irrigation purposes. The proposed place of use is described as being approximately 1,840 acres located within the NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T.18N., R.66E., M.D.B.&M., N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 2, T.19N., R.66E., M.D.B.&M., the E $\frac{1}{2}$ W $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, SE $\frac{1}{4}$ of Section 26, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 35, NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36, T.19N., R.66E., M.D.B.&M., and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T.19N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T.18N., R.66E., M.D.B.&M.¹

II.

Application 19076 was filed on July 29, 1960, by B.H. Robison, and later assigned to Southern Nevada Water Authority, to appropriate 7.0 cfs of water from Bassett Creek for irrigation purposes. The proposed place of use is described as being approximately 960 acres located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.18N., R.66E., M.D.B.&M., the NW $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 25, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T.19N., R.66E., M.D.B.&M., the W $\frac{1}{2}$ NW $\frac{1}{4}$,

¹ File No. 17723, official records in the Office of the State Engineer.

SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T.19N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T.18N., R.66E., M.D.B.&M.²

III.

Application 25857 was filed on November 9, 1970, by B. H. Robison, and later assigned to Southern Nevada Water Authority, to appropriate 3.0 cfs of water from Bassett Creek for irrigation purposes. The proposed place of use is described as being approximately 560 acres located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.18N., R.66E., M.D.B.&M., the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.18N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T.18N., R.66E., M.D.B.&M.³

IV.

Application 26266 was filed on August 23, 1971, by George Eldridge & Son, Inc. to appropriate 3.2 cfs of water from Bassett Creek for irrigation purposes. The proposed place of use is described as being approximately 240 acres located within the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 1, T.18N., R.66E., M.D.B.&M., SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 26, E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 35, E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 36, T.19N., R.66E., M.D.B.&M., the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T.19N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T.18N., R.66E., M.D.B.&M.⁴

V.

Application 79499 was filed on February 11, 2010, by the Southern Nevada Water Authority to appropriate 3.0 cfs of water from Bassett Creek for irrigation purposes. The proposed place of use is described as being 560 acres located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.18N., R.66E., M.D.B.&M., the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.18N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T.18N., R.66E., M.D.B.&M.⁵

² File No. 19076, official records in the Office of the State Engineer.

³ File No. 25857, official records in the Office of the State Engineer.

⁴ File No. 26266, official records in the Office of the State Engineer.

⁵ File No. 79499, official records in the Office of the State Engineer.

VI.

Application 79515 was filed on February 11, 2010, by the Southern Nevada Water Authority to appropriate 7.0 cfs of water from Bassett Creek for irrigation purposes. The proposed place of use is described as being 960 acres located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.18N., R.66E., M.D.B.&M., the NW $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 25, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T.19N., R.66E., M.D.B.&M., the W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T.19N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T.18N., R.66E., M.D.B.&M.⁶

VII.

Application 81071 was filed on August 12, 2011, by the Southern Nevada Water Authority (SNWA) to appropriate 2.486 cfs, not to exceed 1,800 acre-feet annually of water from Bassett Creek for irrigation purposes. The proposed place of use is described as being 450 acres located within the SE $\frac{1}{4}$, NW $\frac{1}{4}$ of Section 25, E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 26, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, NE $\frac{1}{4}$ of Section 36, T.19N., R.66E., M.D.B.&M., the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T.19N., R.67E., M.D.B.&M., the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 6, T.18N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T.18N., R.66E., M.D.B.&M.⁷

VIII.

Application 17723 was not protested. Application 19076 was timely protested by George Eldridge on the grounds that Bassett Creek is adjudicated and fully appropriated under existing water rights. Application 25857 was timely protested by George Eldridge & Son, Inc. on the grounds that Bassett Creek is fully appropriated under existing water rights. Application 26266 was timely protested by B. H. Robison, but the protest was withdrawn on May 20, 1992. Applications 79499 and 79515 were timely protested by the Great Basin Water Network, Confederated Tribes of the Goshute Reservation, White Pine County, Henry Vogler, IV, Center for Biological Diversity, George Eldridge & Son, Inc., Ely Shoshone Tribe, U.S. Department of Interior Bureau of Land Management Schell Field Office, U.S. Fish and Wildlife Service (USFWS), Bruce Eldridge and Amanda Hilton, and the Long Now Foundation on numerous grounds, including but not limited to, the following briefly summarized grounds:¹⁻⁷

⁶ File No. 79515, official records in the Office of the State Engineer.

⁷ File No. 81071, official records in the Office of the State Engineer.

1. Does not meet interbasin transfer criteria;
2. Conflicts with existing rights
 - a. Eldridge water rights on Bassett Creek, USFWS Fish Springs National Wildlife Refuge, Tribal reserved water rights;
3. Threatens to prove detrimental to the public interest
 - a. Air quality, economic impacts, environmental impacts, impacts to cultural resources, visual quality, plant and animal species, impacts to adjacent basins, tribal interests;
4. No unappropriated water is available;
5. Endangered Species Act; and
6. Public Water Reserve 107 reserved rights.

Application 81071 was timely protested by the Great Basin Water Network, Confederated Tribes of the Goshute Reservation, Duckwater Shoshone Tribe, White Pine County, George Eldridge & Son, Inc., Ely Shoshone Tribe, U.S. Department of Interior Bureau of Land Management Ely Field Office, and Nevada Department of Wildlife on numerous grounds, including but not limited to, the following briefly summarized grounds:⁸

1. Does not meet interbasin transfer criteria;
2. Conflicts with existing rights;
3. Threatens to prove detrimental to the public interest
 - a. Air quality, economic impacts, environmental impacts, impacts to cultural resources, visual quality, plant and animal species, impacts to adjacent basins, tribal interests;
4. No unappropriated water is available;
5. Endangered Species Act;
6. Existing drainage has established wetland habitat that wildlife are now dependent upon; and
7. SNWA control of water rights in Spring Valley.

FINDINGS OF FACT

I.

Nevada Revised Statute §533.365(4) 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 that sufficient information is available in the Office of the State Engineer to evaluate the merits of these applications and a hearing is not necessary.

II.

Before an application to appropriate surface water can be considered for approval, it must be determined that there is sufficient unappropriated water available at the source and that the appropriation will not conflict with existing water rights. One of the initial steps in making this determination is to identify all active water rights on the stream in question. The Office of the State Engineer has a searchable water rights database to allow research of existing water rights in a relatively easy and highly accurate manner. A recent review of the database shows existing water rights on Bassett Creek. Bassett Creek is a fully adjudicated stream system (hereinafter, "Decree").⁸ The Decree found that Richard Bate was the only legal claimant to the waters of Bassett Creek and decreed to him a continuous flow of 7.728 cfs of water for irrigation purposes. The Court further found that the irrigation season for harvest crops shall begin on March 15th and end on September 15th of each year, and for the meadow pasture lands, the irrigation season to begin on March 15th and end on June 15th of each year with a duty of 6 acre-feet per acre for harvest lands and 3 acre-feet per acre for meadow pasture lands. The Decreed water right is vested claim V-01219 and the current owner of record is George Eldridge & Son, Inc.⁹

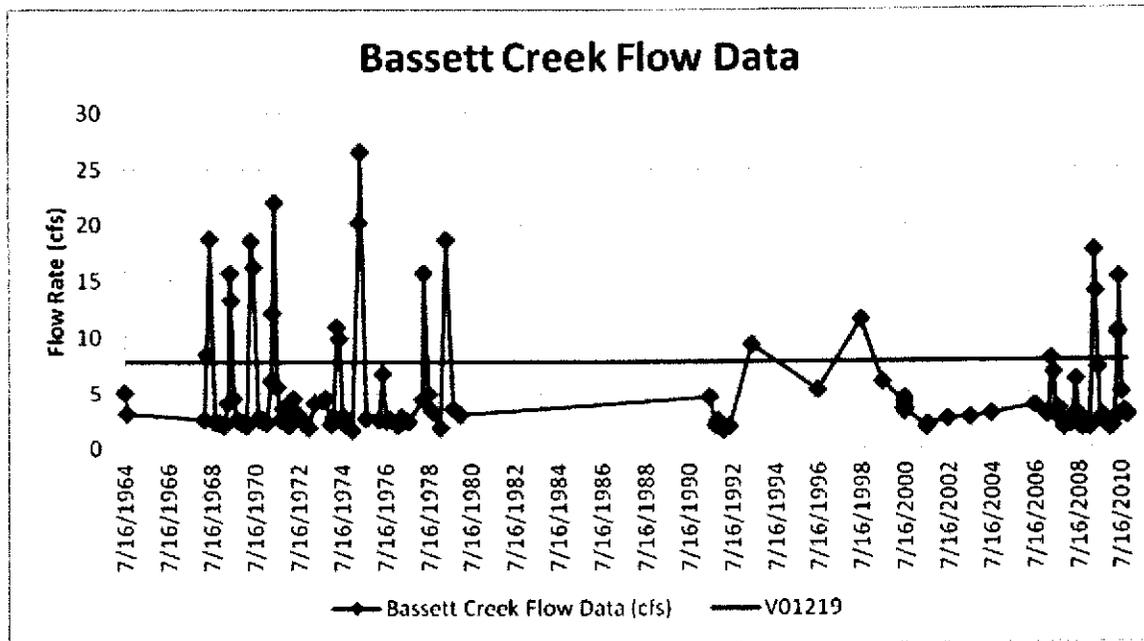
Stream flow measurements of Bassett Creek show that during the spring runoff the flow is large and then steadily decreases until fall, when the flow becomes less than 1 cfs. Based on these measurements and a statement in the Order of Determination, the State Engineer found in 1946 that there was additional water available for appropriation during the spring runoff. This water was allowed to be appropriated by Permit 11301 subject to numerous provisions, such as the amount of water is limited to 4.0 cfs for 400 acres of land, the period of use is limited to start

⁸ *In the Matter of the Determination of the Relative Rights in and to the Waters of Bassett Creek and its Tributaries in White Pine County, Nevada*, Seventh Judicial District Court of the State of Nevada, in and for the County of White Pine, October 10, 1945.

⁹ File No. V-01219, official records in the Office of the State Engineer.

on March 15th and end on July 1st of each year, no work on the channel is allowed that would in any way interfere with the passage of the Decreed water to Richard Bate, and the water shall be measured by an approved weir. With the issuance of Permit 11301, the State Engineer ruled that Bassett Creek was fully appropriated.¹⁰

Subsequent to the Decree, stream-flow measurements have been taken from 1964 to present (2010 data is last available).¹¹ These flow measurements confirm that little has changed from the measurements taken in the 1940s when Bassett Creek was being adjudicated. Peak stream flows occur for a short period of time during spring runoff after which flows rapidly diminish. In some of the years when measurements were taken, the flows were insufficient to meet the demands of V-01219 and spring runoff water would only have been available intermittently to Permit 11301. For example, in 1972 five measurements were recorded, one each in February, March, May, July and October being 2.15, 3.5, 4.47, 3.1 and 2.48 cfs, respectively. For comparison, V-01219 is decreed a continuous flow of 7.728 cfs. The table below illustrates the flow data on Bassett Creek versus the existing vested right V-01219.



¹⁰ State Engineer's Ruling in the matter of Applications 11029 and 11301 to appropriate the waters of Bassett Creek, July 13, 1946, official records in the Office of the State Engineer.

¹¹ The Spring Valley Hydrographic Basin 10-184 NRS § 533.364 Inventory, Appendix C.

On April 4, 1995, Permit 11301 was canceled for failure to comply with the terms of the permit. The cancellation of Permit 11301 means that the water right is no longer valid and the water could now be available for appropriation in the same manner and with similar restrictions as Permit 11301 by applications filed later in time. There are currently eight pending applications filed to appropriate water from Bassett Creek.

Application	File Date	Diversion Rate	Manner of Use	Source
17723	11-21-58	10.0	IRR	Bassett Creek
19076	07-29-60	7.0	IRR	Bassett Creek
25857	11-09-70	3.0	IRR	Bassett Creek
26266	08-23-71	3.2	IRR	Bassett Creek
45679	05-17-82	40.0	PWR	Bassett Creek
79499	02-11-10	3.0	IRR	Bassett Creek
79515	02-11-10	7.0	IRR	Bassett Creek
81071	08-12-11	2.486	IRR	Bassett Creek

The earliest application on file is Application 17723, filed on November 21, 1958. This application requests 10 cfs of water for irrigation purposes from January 1st to December 31st of each year. Permit 11301 allowed for the appropriation of 4.0 cfs from March 15th to July 1st of each year. By reducing the duty of water requested under Application 17723 to the amount available due to the cancellation of Permit 11301, Bassett Creek will be fully consumptively appropriated and the remaining water rights are subject to denial.¹²

The State Engineer finds that with a reduced appropriation allowed to Application 17723, Bassett Creek is again ruled fully appropriated. The State Engineer finds that there is no additional water available for appropriation by Applications 19076, 25857, 26266, 79499, 79515 and 81071.

III.

The SNWA has filed other applications within the Spring Valley Hydrographic Basin for the exportation of groundwater. These applications were the subject of State Engineer's Ruling No. 6164. Under specific conditions, an inventory of the basin must be conducted in conjunction with a request to export water. Since these SNWA applications met those conditions, an inventory of the Spring Valley Basin was conducted and *The Spring Valley Hydrographic Basin 10-184 NRS § 533.364 Inventory* (Inventory) was published in August 2011. One requirement of

¹² Application 45679, which was filed for non-consumptive hydro-power generation remains to be acted on.

the inventory is to provide a snap-shot in time of the water availability within the basin, including surface water sources. This was done for Bassett Creek and the Spring Valley Inventory lists 1,800 afa (approximately 2.486 cfs) available for appropriation on Bassett Creek. According to the Spring Valley Inventory, the estimated average annual stream-flow of Bassett Creek is 4.92 cfs, which is less than the existing water rights on the source and provides evidence that there is no additional water available for appropriation. However, as noted in the above finding, there is evidence that flood or excess water is available for a short period of time during spring run-off and that water will be appropriated by Application 17723. The limitation of the Spring Valley Inventory is clearly stated on page 5 and suggests that it should not be relied upon to determine water availability for future applications to appropriate. The State Engineer finds due to the limited nature of the data used to arrive at the discharge estimate, no guarantee can be made of the accuracy of the water availability estimate and any application filed to appropriate any of the public waters of the State of Nevada will be evaluated as prescribed in Chapters 533 and 534 of the Nevada Revised Statutes.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁴

- 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 protectable 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 the water under cancelled Permit 11301 is available for appropriation. The State Engineer concludes that the appropriation of 4.0 cfs for irrigation

¹³ NRS Chapters 533 and 534.

¹⁴ NRS § 533.370(2).

purposes from March 15th to July 1st of each year under Application 17223 will not conflict with existing rights and will not threaten to prove detrimental to the public interest.

IV.

The State Engineer concludes that following the issuance of a permit under Application 17723 in the amount specified the waters of Bassett Creek shall be considered fully appropriated.

V.

The waters of Bassett Creek are fully appropriated with the approval of Application 17723 in the amount specified; therefore, there is no additional water available to satisfy the remaining applications on the source. The State Engineer concludes that for Applications 19076, 25857, 26266, 79499, 79515 and 81071 there is no unappropriated water at the proposed source. The State Engineer concludes that the approval of the Applications 19076, 25857, 26266, 79499, 79515 and 81071 would conflict with existing rights and would threaten to prove detrimental to the public interest.

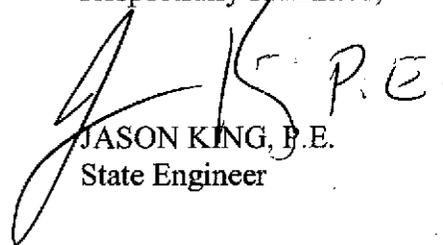
RULING

Application 17723 is hereby approved subject to:

1. Application 17723 is limited to 4.0 cfs and a period of use from March 15th to July 1st of each year;
2. Existing rights; and
3. Payment of the statutory permit fees.

Applications 19076, 25857, 26266, 79499, 79515 and 81071 are hereby denied on the grounds that there is no unappropriated water at the proposed source and their approval would conflict with existing rights and threaten to prove detrimental to the public interest. No ruling is made on the merits of the remaining protests to Applications 79499, 79515 and 81071.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 7th day of
August, 2012.