

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

IN THE MATTER OF APPLICATION 26072)
TO APPROPRIATE THE PUBLIC WATERS)
OF ODGER'S CREEK WITHIN THE SPRING)
VALLEY HYDROGRAPHIC BASIN (184),)
WHITE PINE COUNTY, NEVADA.)

RULING
#6195

GENERAL

I.

Application 26072 was filed on April 23, 1971, by George Eldridge & Son, Inc., to appropriate 10.0 cubic feet per second (cfs) of water from Odger's Creek. The proposed manner of use is described as being for irrigation and domestic purposes for the irrigation of 1,000 acres of land from January 1 to December 31 of each year. The proposed place of use is described as being located within the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 24, E $\frac{1}{2}$ E $\frac{1}{2}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 25 T.18N., R.66E., and the W $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ of Section 19, W $\frac{1}{2}$ W $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 31, 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 23, T.18N., R.66E., M.D.B.&M.¹

II.

Application 26072 was timely protested by B. H. Robison on September 13, 1971, on grounds "That said protestant and his predecessors in interest have beneficially used all the water of Odger's Creek prior to the year 1885 and therefore protestant has a vested right thereto."

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 evidence is available in the records of the Office of the State Engineer to evaluate the merits of Application 26072 and a hearing is not necessary.

¹ File No. 26072, official records in the Office of the State Engineer.

II.

Before an application to appropriate water from a surface water source can be considered for approval, it must be determined that there is sufficient unappropriated water available at the source and that the proposed 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 created and maintains a water rights database to allow research of existing water rights in a relatively easy and highly accurate manner. A recent review of this database identified a group of existing water rights on Odger's Creek and tributaries. The waters of Odger's Creek and its tributaries were adjudicated and decreed on November 2, 1976, (Decree).²

The State Engineer finds that Odger's Creek and tributaries is a fully adjudicated stream system. The Decree found that B.H. Robison and the United States Forest Service were the only legal claimants to the waters of Odger's Creek and tributaries. Decreed to Robison (V-02804) was a diversion rate of 7.039 cfs, 904.62 acre-feet of water for the irrigation of 281.54 acres, stockwater and domestic purposes and to the United States Forest Service (V-02807), 0.00495 cfs or water sufficient for 3 horses and 777 sheep. The Seventh Judicial District Court further found that meadow pasture shall be allowed a duty of 3.0 acre-feet per acre and 6.0 acre-feet per acre for harvest crop. The decreed period of use is year round for meadow pasture and April 1st through October 1st for harvest crop. The current owner of record of decreed water right vested claim V-02804 is the Southern Nevada Water Authority. The decreed and current owner of vested claim V-02807 is the United States Forest Service for stockwater purposes from June 1st through October 31st of each year.

Application 26072 requests an additional appropriation of 10.0 cfs of surface water from Odger's Creek for irrigation purposes. The State Engineer finds that the record of stream flow measurements of Odger's Creek shows that during spring freshet, most notably in April through early June, the flow may be large and then steadily decreases until the flow recedes below the decreed diversion rate of 7.039 cfs. Streamflow records of the Office of the State Engineer show Odger's Creek annually averages from 1.95 cfs to 2.7 cfs. Odger's

² *In the matter of the Determination of the Relative Rights in and to the Waters of Odger's Creek and its Tributaries in White Pine County, Nevada, Seventh Judicial District Court of Nevada, In and for the County of White Pine, November 2, 1976.*

Creek historically has its maximum flows during April through early June, which in a good water year may exceed the decreed diversion rate; however, this high flow, when available, is short in duration, usually April through early June and does not extend into the summer irrigation months of June through September. In the years when measurements were taken, the flows met the committed resource flow on only four occasions during May and June.

Based on the record of stream flow data and the existing water rights on the source, the State Engineer finds Odger's Creek to be fully appropriated and no additional appropriation of water can be considered from this source.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate public waters where:⁴

- 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 the waters of Odger's Creek and its tributaries are fully appropriated and there is no unappropriated water at the proposed source sufficient to satisfy Application 26072. The State Engineer concludes that the approval of the Application 26072 would conflict with existing rights and would threaten to prove detrimental to the public interest.

³ NRS Chapter 533.

⁴ NRS § 533.370(2).

RULING

Application 26072 is hereby denied on the grounds that there is no unappropriated water at the proposed source and its approval would conflict with existing rights and threaten to prove detrimental to the public interest.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 8th day of
October, 2012.