

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

IN THE MATTER OF APPLICATIONS)
26105, 26112 AND 79502 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF PIERMONT CREEK WITHIN THE)
SPRING VALLEY HYDROGRAPHIC)
BASIN (184), WHITE PINE COUNTY,)
NEVADA.)

RULING

#6196

GENERAL

I.

Application 26105 was filed on May 5, 1971, by George Eldridge & Son, Inc., to appropriate 7.5 cubic feet per second (cfs) of water from Piermont Creek. The proposed manner of use is described as being for irrigation and domestic purposes for the irrigation of 440 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 $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 24, NE $\frac{1}{4}$ of Section 25, T.19N., R.66E., 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 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T.19N., R.66E., M.D.B.&M.¹

II.

Application 26112 was filed on May 10, 1971, by B. H. Robison to appropriate 8.0 cfs of water from Piermont Creek. The proposed manner of use is described as being for irrigation of 1,500 acres of land from January 1 to December 31 of each year. The proposed place of use is described as being located within the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 6, T. 18N. R.67E., and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 26, E $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36, T.19N., R.66E., and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, NW $\frac{1}{4}$ NW $\frac{1}{4}$, 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 proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T.19N., R.66E., M.D.B.&M.²

¹ File No. 26105, official records in the Office of the State Engineer.

² File No. 26112, official records in the Office of the State Engineer.

III.

Application 79502 was filed on February 11, 2010, by the Southern Nevada Water Authority to appropriate 8.0 cfs of water from Piermont Creek. The proposed manner of use is described as being for irrigation of 1,500 acres of land from January 1 to December 31 of each year. The proposed place of use is described as being located within the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 6, T.18N., R.67E., and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 26, E $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36, T.19N., R.66E., and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, NW $\frac{1}{4}$ NW $\frac{1}{4}$, 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 proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T.19N., R.66E., M.D.B.&M.³

IV.

Application 26105 was timely protested by B. H. Robison on the grounds that:

The undersigned, on behalf of protestant, is informed and believes, and therefore states to be a fact, that protestant and his predecessors in interest, have a vested right to the waters of Piermont Creek, having beneficially used all the waters of Piermont Creek on the properties owned by protestant in Spring Valley, Nevada, said protestant and his predecessors in interest having appropriated such waters prior to 1892.

V.

Application 26112 was timely protested by George Eldridge & Son, Inc., and this protest was withdrawn by agreement between the Applicant and the Protestant dated May 20, 1992.

VI.

Application 79502 was timely protested by Great Basin Water Network, Confederated Tribes of the Goshute Reservation, White Pine County, Henry Volger, IV, Center for Biological Diversity, Ely Shoshone Tribe, U.S. Fish and Wildlife Service and The Long Now Foundation on numerous grounds, including but not limited to, the following briefly summarized issues:

1. Does not meet interbasin transfer criteria
2. Conflicts with existing rights associated with
 - a. USFWS Fish Springs NWR, Tribal reserved water rights
3. Threatens to prove detrimental to the public interest

³ File No. 79502, official records in the Office of the State Engineer.

- 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 available
5. Endangered Species Act

FINDINGS OF FACT

I.

Nevada Revised Statutes § 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 Applications 26105, 26112 and 79502 and a hearing is not necessary.

II.

Before an application to appropriate 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 searchable 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 Piermont Creek. The waters of Piermont Creek were adjudicated and decreed on October 7, 1976, (Decree).⁴

The State Engineer finds that Piermont Creek 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 Piermont Creek. Decreed to Robison (V-02805) was a diversion rate of 6.666 cfs of water for the irrigation of 629.85 acres, stockwater and domestic purposes and to the United States Forest Service (V-02808 and V-02509), 0.00519 cfs or water sufficient for 3 horses and 816 sheep each. The Seventh Judicial District Court further found that meadow

⁴ *In the matter of the Determination of the Relative Rights in and to the Waters of Piermont Creek and its Tributaries in White Pine County, Nevada, Seventh Judicial District Court of Nevada, In and for the County of White Pine, October 7, 1976.*

pasture shall be allowed a duty of 3.0 acre-feet per acre and 1.5 acre-feet per acre for diversified pasture. The decreed period of use is year round for meadow pasture and April 1st through October 1st for diversified pasture. Vested claim V-02805 is currently owned by the Southern Nevada Water Authority. A summary of the committed resource of Piermont Creek is presented below:

App	Status	Diversion cfs	Use	Period of use	Duty acre-feet	Units	Current owner of Record
V02805	Dec.	6.666	Irr	4/1-10/1	629.85	AFS	Southern Nevada Water Authority
V02808	Dec.	0.0052	Stk	6/1-10/31	1.504	AFS	United States Forest Service
V02809	Dec.	0.0052	Stk	6/1-10/31	3.68	AFS	United States Forest Service
7847	Cer.	2.484	Pwr	1/1-12/31	Nonconsumptive	AFA	Ely Calumet Mining Corporation
8396	Cer.	0.156	MM	1/1-12/31	112.94	AFA	Ely Calumet Mining Corporation
10766	Cer.	3.0	Irr	5/1-10/1	1210.2	AFS	Southern Nevada Water Authority
20895	Cer.	3.0	Irr	1/1-12/31	554.32	AFA	Southern Nevada Water Authority
Sum		15.32			2,512.494	AF	

A search of the records of the Office of the State Engineer found three applications to appropriate an additional 23.5 cfs of water from Piermont Creek for consumptive irrigation purposes as presented below:

App	Status	Diversion cfs	Use	Period of Use	Duty acre-feet/year	acres	Units	Owner of record
26105	RFP	7.5	Irr	1/1-12/31	1,760	440	AFA	George Eldridge & Son, Inc.
26112	RFA	8.0	Irr	1/1-12/31	6,000	1,500	AFA	Southern Nevada Water Authority
79502	RFP	8.0	Irr	1/1-12/31	6,000	1,500	AFA	Southern Nevada Water Authority
Sum		23.5			13,760	3,400	AF	

The State Engineer finds that the record of stream flow measurements of Piermont Creek shows that during the spring freshet, most notably in April through early June, the flow may be large and then steadily decreases until the flow recedes well below the committed resource diversion rate of 15.32 cfs. The records of the Office of the State Engineer show periodic measurements of Piermont Creek that annually average between approximately 2.5 cfs and 5.0 cfs. Piermont Creek historically has its maximum flows during April through early June.

Measurements in May 1973 and June 1975 exceeded 20 cfs and in May 1975 exceeded 30 cfs. However, this high flow, when available, is short in duration, usually within April through early June and does not extend into the summer irrigation months of June through September. These three measurements were the only times on record that Piermont Creek flowed at a rate greater than the committed resource diversion rate of 15.32 cfs. Based on the record of stream flow data and the existing water rights on the source, the State Engineer finds Piermont Creek to be fully appropriated and that 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.⁵

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate public waters 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 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 Piermont Creek and its tributaries are fully appropriated and there is no unappropriated water at the proposed source sufficient to satisfy Applications 26105, 26112 and 79502. The State Engineer concludes that the approval of the Applications 26105, 26112 and 79502 would conflict with existing rights and would threaten to prove detrimental to the public interest.

RULING

The protests to Applications 26105 and 79502 are upheld in part. Applications 26105, 26112 and 79502 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

⁵ NRS Chapter 533.

⁶ NRS § 533.370(2).

detrimental to the public interest. No ruling is made on the merits of the remaining protests to Applications 26105 and 79502.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 8th day of
October, 2012.