

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

IN THE MATTER OF APPLICATIONS 79503,)
79516 AND 81073 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF NORTH CREEK)
AND MEADOW CREEK WITHIN THE)
SPRING VALLEY HYDROGRAPHIC BASIN)
(184), WHITE PINE COUNTY, NEVADA.)

RULING

#6207

GENERAL

I.

Application 79503 was filed on February 11, 2010, by the Southern Nevada Water Authority (SNWA) to appropriate 4.0 cubic feet per second (cfs) of water from North Creek. The proposed manner of use is for the irrigation of 1,000 acres from January 1st to December 31st of each year. The proposed place of use is described as being located within portions of Sections 11, 12, 13 and 14, T.19N. R.66E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.19N., R.66E., M.D.B.&M.¹

II.

Application 79516 was filed on February 11, 2010, by the Southern Nevada Water Authority to appropriate 2.0 cfs of water from Meadow Creek. The proposed manner of use is for the irrigation of 1,000 acres from January 1st to December 31st of each year. The proposed place of use is described as being located within the E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, W $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 12, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, and NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, all within T.19N. R.66E., 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 15, T.19N., R.66E., M.D.B.&M.²

III.

Application 81073 was filed on August 12, 2011, by the Southern Nevada Water Authority to appropriate 0.829 cfs, not to exceed 600 acre-feet annually, of water from

¹ File No. 79503, official records in the Office of the State Engineer.

² File No. 79516, official records in the Office of the State Engineer.

Meadow Creek. The proposed manner of use is for the irrigation of 150 acres from January 1st to December 31st of each year. The proposed place of use is described as being located within the E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, W $\frac{1}{2}$ W $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 12, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, and NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 14, all in T.19N. R.66E., 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 15, T.19N., R.66E., M.D.B.&M.³

IV.

Applications 79503 and 79516 were timely protested by the Great Basin Water Network, Confederated Tribes of the Goshute Reservation, Henry Volger IV, White Pine County, Center for Biological Diversity, United States Department of the Interior, Bureau of Land Management, the Ely Shoshone Tribe, United States Fish and Wildlife Service, and The Long Now Foundation. Application 81073 was timely protested by the Ely Shoshone Tribe, Confederated Tribes of the Goshute Reservation, Duckwater Shoshone Tribe, Great Basin Water Network, White Pine County and United States Department of the Interior, Bureau of Land Management. There are numerous protest issues, 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 National Wildlife Refuge,
 - b. 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 available.

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

³ File No. 81073, official records in the Office of the State Engineer.

records of the Office of the State Engineer to evaluate the merits of Applications 79503, 79516 and 81073 and their associated protests and a hearing is not necessary.

II.

The State Engineer finds most of the protests assert grounds related to the SNWA's groundwater importation project. The State Engineer finds that NRS § 533.370(3) is a statute that addresses the interbasin transfer of groundwater and Applications 79503, 79516 and 81073 are applications for surface water; therefore, most of the protest grounds asserted are not relevant to the consideration of this Application.

III.

Before an application to appropriate water from a surface 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 single existing water right on both Meadow and North Creeks. The sole active right on Meadow Creek and North Creek is Permit 4041, Certificate 1930, which was perfected for 1.20 cfs or 435 acre-feet for the irrigation of 120 acres from April 1st through September 30th of each year and is currently owned by the Southern Nevada Water Authority.

The State Engineer finds Applications 79516 and 81073 request an additional appropriation of a total of 2.829 cfs of surface water from Meadow Creek for irrigation purposes. Application 79503 requests an additional appropriation of a total of 4.0 cfs of surface water from North Creek for irrigation purposes. Meadow Creek and North Creek converge within the NE¼ NE¼ of Section 15, T.19N., R.66E., M.D.B.&M.

The point of diversion under Permit 4041, Certificate 1930, is located within the NW¼ NE¼ of Section 14, T.19N., R.66E., M.D.B.&M., which is downstream of the confluence of Meadow Creek and North Creek. The proposed point of diversion on Meadow Creek under Applications 79516 and 81073 is approximately three-quarters of a mile upstream of the point of diversion of Permit 4041, Certificate 1930. The proposed

point of diversion on North Creek under Application 79503 is approximately one and one-quarter mile upstream of the point of diversion of Permit 4041, Certificate 1930. The State Engineer finds that, during the irrigation season, Applications 79503, 79516 and 81073 would be junior in priority and subject to existing rights of Permit 4041, Certificate 1930 and would only get any excess water, if available, after the requirements of Permit 4041, Certificate 1930 are fully satisfied.

IV.

The record of stream flow measurements of Meadow Creek shows that, during the spring freshet, the flow peaks during April through early June and then steadily decreases until fall. Stream flow records available in the Office of the State Engineer show that the measuring point located approximately 3/4 mile upstream of the point of diversion of Permit 4041, Certificate 1930, between July 2007 and November 2010, on Meadow Creek, produced measured flows sufficient to satisfy Permit 4041, Certificate 1930 on two occasions. The two flows above 1.2 cfs were recorded in May 2009 and June 2010. Stream flow records of the Office of the State Engineer show periodic measurements of Meadow Creek that average annually approximately 0.8 cfs.⁴

The record of stream flow measurements of North Creek shows that, during the spring freshet, the flow peaks April through July and then steadily decreases until fall. Stream flow records available in the Office of the State Engineer show that the measuring point on North Creek is located approximately 1½ miles upstream of the point of diversion of Permit 4041, Certificate 1930. Stream flow records between July 1996 and November 2010, show North Creek producing a flow sufficient to satisfy Permit 4041, Certificate 1930 only on several occasions during the spring freshet. Stream flow records of the Office of the State Engineer show periodic stream flow measurements of North Creek that average annually approximately 1.2 cfs.⁴

Additional stream flow analysis is available from *The Spring Valley Hydrographic Basin Inventory* (Inventory),⁵ which estimates average annual stream flow for both Meadow Creek at 0.98 cfs and North Creek at 0.45 cfs for a total of 1.43 cfs,

⁴ Streamflow measurements of Meadow and North Creeks, official records in the Office of the State Engineer.

⁵ The Spring Valley Hydrographic Basin 10-184 NRS § 533.364 Inventory, 2011, p. 106.

when expanded equates to an annual stream flow duty of 1,035.28 acre-feet. The Inventory is considered a snap shot in time as an estimate of water availability and makes no guarantee as to future water availability. The proposed manner of use under Applications 79503, 79516 and 81073 is irrigation and due to climatic conditions the irrigation season in the Spring Valley Hydrographic Basin can be reasonably defined as being between April 1st through September 30th of each year or 183 days. The State Engineer finds that in using the duty of 1,035.28 acre-feet annually minus the 435 acre-feet currently appropriated under Permit 4041, Certificate 1930, leaves 600 acre-feet to be available for appropriation. The State Engineer finds that this water is available for appropriation at a duty of 4.0 acre-feet per acre. This duty of water would irrigate 150 acres of land.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁶

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate public waters where:⁷

- 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 during the irrigation season, stream flows on Meadow Creek and North Creek reasonably, but not consistently, produce the diversion rate of 2.0 cfs required to satisfy Permit 4041, Certificate 1930. The State Engineer concludes that Applications 79503 and 79516 would be eligible to periodically receive water during the spring freshet when high run off and flood water may be available in

⁶ NRS Chapter 533.

⁷ NRS § 533.370(2).

excess of the requirements of Permit 4041, Certificate 1930. The State Engineer concludes that there could be unappropriated water including high run off and flood water from Meadow and North Creeks in the amount of 600 acre-feet annually. The applied for diversion rates of 4.0 cfs for North Creek and the 2.0 cfs for Meadow Creek would include high runoff and flood water that is sporadically available for short periods and would be included within the applications considered here.

IV.

The State Engineer concludes that following the issuance of permits under Applications 79503 and 79516 that Meadow and North Creeks shall be considered fully appropriated and no additional water remains for appropriation under Application 81073.

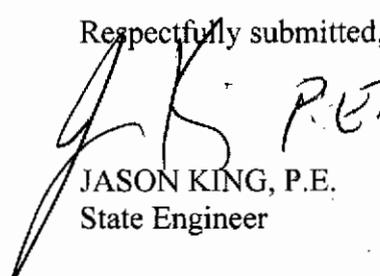
RULING

The protests are overruled and Application 79503 is hereby approved for 4.0 cfs from North Creek and Application 79516 is hereby approved for 2.0 cfs from Meadow Creek, from January 1st to December 31st, of each year, both for the irrigation of the same 150 acres within the described place of use and subject to existing rights and payment of statutory permit fees.

The protests to Application 81073 are upheld in part and Application 81073 is hereby denied on the grounds that there is no unappropriated water at the source and its 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 protest issues.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 11th day of
December, 2012.