

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

IN THE MATTER OF APPLICATIONS 26263)
AND 79517 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNNAMED)
SPRING WITHIN THE SPRING VALLEY)
HYDROGRAPHIC BASIN (184), WHITE)
PINE COUNTY, NEVADA.)

RULING

#6211

GENERAL

I.

Application 26263 was filed on August 17, 1971, by B. H. Robison and later assigned to the Southern Nevada Water Authority to appropriate 2.0 cubic feet per second (cfs) of the waters of unnamed springs. The proposed manner of use is described as being for the irrigation of 560 acres from January 1 to December 31 of each year. The proposed place of use is described as being located within the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 25, E $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36, T.19N. R.66E., and NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 31, T.19N., 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 said Section 25.¹

II.

Application 79517 was filed on February 11, 2010, by the Southern Nevada Water Authority to appropriate 2.0 cfs of the waters of an unnamed spring. The proposed manner of use is described as being for the irrigation of 560 acres from January 1 to December 31 of each year. The proposed place of use is described as being located within the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 25, E $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36, T.19N. R.66E., and NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ 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 $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 25.²

III.

Application 79517 was timely protested by the Great Basin Water Network, The Confederated Tribes of the Goshute Reservation, White Pine County, Henry C. Volger IV, the Center for Biological Diversity, George Eldridge and Son, Inc., The Ely Shoshone Tribe, Bruce Eldridge and Amanda Hilton, U.S. Fish and Wildlife Service (Portland) and The Long Now

¹ File No. 26263, official records in the Office of the State Engineer.

² File No. 79517, official records in the Office of the State Engineer.

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 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, and
4. No unappropriated water available.

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 26263 and Application 79517 and the associated protests and a hearing is not necessary.

II.

The State Engineer finds that the proposed point of diversion described in Application 26263 and Application 79517 is identical to the point of diversion from Piermont Creek as described in Permit 20895, Certificate 7560 and that the unnamed spring is tributary to Piermont Creek.

Applications 26105, 26112 and 79502 were applications to appropriate the waters of Piermont Creek and were denied by State Engineer's Ruling No. 6196 on October 8, 2012, on the ground that there was no unappropriated water on the source applied for.³

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

³ State Engineer's Ruling No. 6196, official records in the Office of the State Engineer.

⁴ NRS Chapter 533.

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate public waters where:⁵

- 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 unnamed spring described in Applications 26263 and 79517 has been found to be tributary to Piermont Creek which is fully appropriated under existing water rights. The State Engineer concludes that the approval of Applications 26263 and 79517 would conflict with existing rights. In addition, the State Engineer concludes that there is no unappropriated water in Piermont Creek or its tributaries.

RULING

Application 26263 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. The protests to Application 79517 are upheld in part in that there is no unappropriated water at the proposed source and Application 79517 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. No ruling is made on the merits of the remaining protest issue.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 12th day of
December, 2012.

⁵ NRS § 533.370(2).