

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

IN THE MATTER OF APPLICATION 79520)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF SHINGLE CREEK WITHIN THE)
SPRING VALLEY HYDROGRAPHIC BASIN)
(184), WHITE PINE COUNTY, NEVADA.)

RULING
#6215

GENERAL

I.

Application 79520 was filed on February 11, 2010, by the Southern Nevada Water Authority (SNWA), to appropriate 8.5 cubic feet per second (cfs) of water from Shingle Creek. The proposed manner of use is described as being for irrigation and domestic purposes for the irrigation of 259.17 acres. The proposed use will be from January 1 to December 31 of each year. The proposed place of use is described as being located within portions of the S½ SW¼ of Section 15, SE¼ of Section 16, NW¼ of Section 22, T.13N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 13, T.13N., R67E., M.D.B.&M.¹

II.

Application 79520 was timely protested by Great Basin Water Network, The Confederated Tribes of the Goshute Reservation, Annemarie Heckethorne for the Heckethorne Family Trust, White Pine County, Baker Ranches, Inc., Center for Biological Diversity, Paula Carson, United States Department of the Interior, Bureau of Land Management, Schell Field Office, Ely Shoshone Tribe, U.S. Fish and Wildlife Service (USFWS) and The Long Now Foundation on numerous grounds, including many grounds related to the SNWA importation project. The protest grounds include but are not limited to the following briefly summarized issues:

1. Does not meet interbasin groundwater transfer criteria,
2. Conflicts with existing rights associated with:
 - a. USFWS Fish Springs National Wildlife Refuge,
 - b. Tribal reserved water rights,

¹ File No. 79520, official records in the Office of the State Engineer.

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 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 Application 79520 and its 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 Application 79520 is an application 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 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 Shingle Creek.

App	Status	CFS	Use	Period of use	Duty	Units	Owner of Record
920	CER	1.8133	IRR	Mar 1 - Oct 20	543.99	AFS	SNWA
15812	CER	1.593	IRR	Mar 20 - Nov 20	640	AFS	SNWA
17163	CER	1.6	IRR	Apr 1 - Oct 31	320	AFS	SNWA
29162	CER	6.9	IRR	Jan 1 - Dec 31	1,036.68	AFA	SNWA
77714	CER	0.0013	STK	Apr 15 - Nov 30	0.92	AFS	SNWA
Totals		11.9076			2,541.59		

The State Engineer finds that the record of stream flow measurements of Shingle Creek shows that during the spring freshet, the flow may increase and then steadily decrease until fall, when the flow falls well below the committed diversion rate of 11.9076 cfs. The records of the Office of the State Engineer indicate that the flow of Shingle Creek annually averages 1.2 cfs and 1.4 cfs during the irrigation season (April through September).² In the years when measurements were taken, the stream flow has never exceeded the committed resource diversion of 11.9076 cfs. Considering this fact, water would only be available during a significant flood event.

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

IV.

An inventory of underground as well as surface water of the Spring Valley Hydrographic Basin was conducted and *The Spring Valley Hydrographic Basin 10-184 NRS § 533.364 Inventory* (Inventory) was published in August 2011. One requirement of the Inventory is to provide a snap-shot in time of the water availability within the groundwater basin, including surface water sources. This study included Shingle Creek and the Inventory lists 731 afa (approximately 1.01 cfs) as the estimated average annual stream-flow of Shingle Creek, which is significantly less than the existing committed 11.9076 cfs on the source and provides evidence that there is no additional water available for appropriation.

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 an application to appropriate the public waters where:⁴

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

² Stream Flow Measurements, official records in the Office of the State Engineer.

³ NRS Chapter 533.

⁴ NRS § 533.370(2).

- 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.

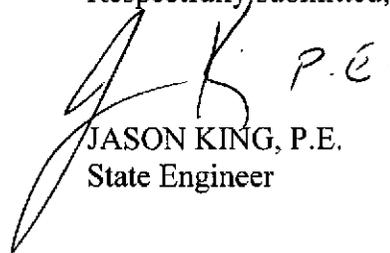
III.

The State Engineer concludes from the stream flow measurements of Shingle Creek, that the committed diversion rate of 11.9076 cfs has never been exceeded. The State Engineer concludes that the waters of Shingle Creek shall be considered fully appropriated and there is no unappropriated water at the proposed source. The State Engineer concludes that the approval of the Application 79520 would conflict with existing rights and would threaten to prove detrimental to the public interest.

RULING

Application 79520 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 issues.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 15th day of
February, 2013.