

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

IN THE MATTER OF APPLICATIONS)
66044, 66045 AND 66046 FILED TO)
APPROPRIATE SURFACE WATERS)
OF CAMP VALLEY CREEK AND)
TRIBUTARIES WITHIN THE SPRING)
VALLEY HYDROGRAPHIC BASIN)
(201), LINCOLN COUNTY, NEVADA.)

RULING

#6228

GENERAL

I.

Application 66044 was filed on February 4, 2000, by Lee A. Pearson to appropriate 5.0 cubic feet per second (cfs) of surface water from Camp Valley Creek and tributaries for the irrigation of 200 acres of land within the SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3, NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T.4N., R.69E., 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 33, T.5N., R.69E., M.D.B.&M. Item 8, which is to describe the proposed works of diversion, indicated that "water flows from the creek into a 10" P.I.P. waterline that supplies a gravity flow irrigation system 1.5 – 2 mi. below pt. of diversion." The application also indicates the works of diversion are completed. Item 12, the remarks section of the application, indicates that the Applicant is filing for any/all unused or high water in Camp Valley Creek and that the Applicant is the last farm and last user on Camp Valley Creek.¹

II.

Application 66045 was filed on February 4, 2000, by Lee A. Pearson to appropriate 2.0 cfs of surface water from Camp Valley Creek and tributaries for power generation within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, all within T.4N., R.69E., 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 33, T.5N., R.69E., M.D.B.&M., and is the same point of diversion as described under Application 66044. The water will be returned to the stream in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T.4N., R.69E., M.D.B.&M.²

¹ File No. 66044, official records in the Office of the State Engineer.

² File No. 66045, official records in the Office of the State Engineer.

III.

Application 66046 was filed on February 4, 2000, by Lee A. Pearson to appropriate 1.5 cfs of surface water from Camp Valley Creek and tributaries for stockwatering purposes within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T.4N., R.69E., M.D.B.&M., for 120 head of cattle and 20 horses. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T.5N., R.69E., M.D.B.&M., and is the same point of diversion as described under Applications 66044 and 66045.³

IV.

Applications 66044, 66045 and 66046 were timely protested by Ken Lytle, Lazy D. Livestock, Inc. and Eagle Valley Irrigation Company on the grounds that they feel these appropriations will affect their existing stock-watering and irrigation rights, which they state are above the filings and down the drainage from the applications.

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 Nevada. The State Engineer finds that in the case of Applications 66044, 66045 and 66046 there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

II.

By letter dated August 7, 2008, the Office of the State Engineer requested certain information from the Applicant. The letter addressed issues regarding land ownership or lack thereof and availability of water. The August 7, 2008, letter from the Office of the State Engineer noted the potential that this "excess water" for which the Applicant had applied is water that reaches the Muddy River, which is a fully appropriated stream. Therefore, the Applicant was requested to provide information that demonstrates this "excess water" is not already appropriated.¹

As to the question of unappropriated water, Mr. Pearson indicated that he is the final user on Camp Valley Creek and that the water drops back into the ground below his property, seldom

³ File No. 66046, official records in the Office of the State Engineer.

staying above ground in the creek bed two miles below his house and it does not resurface. He stated that the occasional flood will make it down as far as the Rawhide Flood Retention Dam eight miles below his ranch, and that theoretically, if a large enough flood occurs to cause the Rawhide Dam to overflow, there is another rock dam a few miles further down the creek, followed by Eagle Valley Reservoir, which is about 18 miles below his house. He states that water from Eagle Valley Reservoir is used to irrigate in Ursine and that excess water continues down to Echo Reservoir, which lies more or less ten miles below Eagle Valley Reservoir, which has overflowed once in its history, and at that time no water from Camp Valley Creek was flowing to it. Finally, he states that Camp Valley Creek must pass all these obstacles before it can continue down to the Meadow Valley Drainage to the Muddy River, so when the chance of making all the way to Rawhide Flood Retention Dam is so rare, he is of the opinion that the theory that the water is appropriated in the Muddy River is a stretch of reason.¹

The State Engineer believes the Rawhide Flood Retention Dam Mr. Pearson mentions is also known as the Hollinger Debris Dam, which is located in Section 20, T.3N., R.70E., M.D.B.&M.⁴ This dam is shown on the United States Geological Survey 1:24,000 series, Eagle Valley Reservoir, Nevada quadrangle map dated 1972 and is approximately 8½ miles southeast below the Pearson Ranch.

Camp Valley Creek is the headwaters of the drainage of the Meadow Valley Wash system. The waters of this system are intermittent in nature and at various points the water becomes subsurface flow disappearing below the surface of the stream channel by percolating or infiltrating through the underlying porous strata of the stream bed. At other various points the water resurfaces in the stream channel and also discharges in various springs in or near the stream channel or wash. There are existing water rights along this system at these points where the water, that had infiltrated below the streambed further upstream, resurfaces and becomes available to be placed to a beneficial use. Several of these points where the water surfaces in the stream channel or discharges in springs were filed on by claims of pre-statutory vested water rights, which were adjudicated in the Meadow Valley Wash Decree.

On June 9, 1999, the Seventh Judicial District Court in and for the County of Lincoln issued its Findings of Fact, Conclusions of Law, Judgment and Decree in the Matter of the Determination of the Relative Rights in and to the Waters of Camp Valley Creek, Eagle Valley

⁴ Dam File No. J - 063, official records in the Office of the State Engineer.

Creek, Panaca Big Spring, Clover Valley Wash, Meadow Valley Wash and their Tributaries in Lincoln and Clark Counties, Nevada (“Meadow Valley Wash Decree”). Finding of Fact “R” in the Meadow Valley Wash Decree indicates that the headwaters of the system are from Camp Valley Creek located on the east slope of the Wilson Range between Rosencrans Mountain and Mount Wilson at an elevation in excess of 8,000 feet. The finding provides that perennial springs and early snow melt contribute to the flow of the drainage, which sinks below the stream bed and resurfaces according to the underlying strata and tributary flows.⁵ The Decree provides that no person may divert water other than provided for under the Decree or in excess of a specific allotment under permits granted or that may hereafter be granted by the State Engineer. The State Engineer finds that while the Meadow Wash Decree did not declare the system fully appropriated, the State Engineer still must consider whether the use of the water applied for under these applications conflicts with existing rights.

Applications 66044, 66045 and 66046 were timely protested by Ken Lytle, Lazy D. Livestock, Inc. and Eagle Valley Irrigation Company on the grounds that they feel these appropriations will affect their existing stock-watering and irrigation rights, which they state are above the filings and down the drainage from the applications. The State Engineer finds that, if the Protestants’ water rights are above the points of diversion applied for under Applications 66044, 66045 and 66046, he fails to see how the use of this water will conflict with their existing water rights. The State Engineer realizes that farmers, ranchers and other members of the general public may not fully understand the meaning of water right terms or how to accurately convey their concerns as an issue in a protest. If the State Engineer takes the clause “which are above the filings” with the connotation of senior in priority, then it is possible that these new appropriations of water from Camp Valley Creek may conflict with existing decreed rights in the Meadow Valley Wash Decree or possibly with other claims of vested rights and/or permits, which are not a part of the decree.

While the Protestants did not specifically mention the water rights that they feel these new appropriations will have an effect on, the Office of the State Engineer has created and maintains a searchable water rights database to allow research of existing water rights in a

⁵ *In the Matter of the Determination of the Relative Rights in and to the Waters of the Camp Valley Creek, Eagle Valley Creek, Panaca Big Spring, Clover Valley Wash, Meadow Valley Wash and their tributaries in Lincoln and Clark Counties, Nevada, Seventh Judicial District Court of the State of Nevada, In and For the County of Lincoln, June 9, 1999.*

relatively easy and highly accurate manner. A recent review of this database shows existing water rights on Camp Valley Creek or sometimes named Camp Valley Wash. In addition, the Meadow Valley Wash Decree (the stream system) includes a number of springs, washes, creeks and other tributaries of which Camp Valley Creek is the headwaters of the system. The State Engineer finds that the recent review of the database and the Meadow Valley Wash Decree shows several decreed rights having points of diversion and/or places of use upstream of these applications, but these rights will not be further examined, as these rights cannot be impacted by the appropriation of water from the system under these pending applications.

A listing of the existing decreed rights downstream of the proposed point of diversion (POD) of the pending applications to the dam impounding the waters of Eagle Valley Reservoir⁶ is presented below:

App.	Status	Source	POD ⁷	Div. cfs	Use	Units	Duty acre-feet	Period of use	Current owner of Record
R04418 ⁸	Decreed	Unnamed Spring	NE¼ SE¼ Sec. 18, T.3N., R.70E	0.0033	DEC	N/A	N/A	1/1-12/31	BLM
V04370	Decreed	Meadow Valley Wash Springs	NW¼ SW¼ Sec. 20, T.3N., R.70E.	10.071	IRR	438.76 acres	2,193.80	1/1-12/31	Delmue, Frank and Rose Marie
V03838	Decreed	Unnamed Springs	SW¼ SW¼ Sec. 32, T.3N., R.70E.	7.611	IRR & STK	304.82 acres	1,524.19	1/1-12/31	Nevada Division of State Parks
V04172	Decreed	Spring Valley Channel	SW¼ NW¼ Sec. 5, T.2N., R.70E.	0.471	IRR & STK.	18.88 acres	94.40	1/1-12/31	Lytle, Gordon and Betty

⁶ The dam impounding the water of Eagle Valley Reservoir is located within the NW¼ of Section 24, T.2N., R.69E., M.D.B.&M., Dam File No. J - 078, official records in the Office of the State Engineer.

⁷ In many cases decreed claims of vested rights may have multiple points of diversion from various springs or dams on the stream source. The point of diversion shown in this table is for the most upstream diversion as given under the Meadow Valley Wash Decree.

⁸ Finding of Fact "S" in the Meadow Valley Wash Decree recognized 9 claims of reserved rights submitted by the BLM. Even though R04418 is not listed in the decree, Finding of Fact "T" listed those reserved rights that were not considered since they are not directly tributary to Meadow Valley Wash Creek or any of its tributaries. Therefore, R04418 is one of the 9 reserved rights that is recognized. The POD of this spring is in the stream channel, see supporting map filed with R04418, official records in the Office of the State Engineer.

The State Engineer finds that due to there being existing decreed rights on the Meadow Valley Wash system downstream of the Applicant's proposed point of diversion, which are served with water that percolates through the underlying strata and disappears below the streambed surface and resurfaces downstream serving these existing rights, that the appropriation of this water will conflict with these existing decreed rights and as such there is no additional water available for appropriation.

III.

Permit 5119, Certificate 3251 was issued April 21, 1949, for irrigation and domestic purposes and was included in the Meadow Valley Wash Decree.⁵ Permit 5119, Certificate 3251 allowed for the irrigation of 45.4 acres of hay, garden and grain from Camp Valley Wash within portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, all in T.4N., R.69E., M.D.B.&M. The duty of water of 124.05 acre-feet allowed under Certificate 3251 is approximately based on expanding the diversion rate over the irrigation season of May 1st through September 15th of each year. Application 62331 was filed on July 29, 1996, to change only the point of diversion of Permit 5119, Certificate 3251 from within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3, T.4N., R.69E., M.D.B.&M. and was approved on September 9, 1997, in the amount of 0.454 cfs, but not to exceed 124.05 acre-feet per season (afs). The point of diversion of Permit 62331 is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T.5N., R.69E., M.D.B.&M., and is the same point of diversion as Applications 66044, 66045 and 66046. Lee Pearson is the current owner of record in the Office of the State Engineer of a portion of Permit 62331. The State Engineer believes Lee Pearson to be one and the same as Lee A. Pearson, Applicant for Applications 66044, 66045 and 66046.⁹

Mr. Pearson indicated that he is the final user on Camp Valley Creek. The State Engineer may agree that Mr. Pearson may be the final user of the water on the source, so called and named, Camp Valley Creek; however, the State Engineer does not agree that Mr. Pearson is the final user of the water on the stream system. The State Engineer finds that Mr. Pearson's Permit 62331, being a change of Decreed Right Permit 5119, Certificate 3251 is not the final Decreed Right utilizing the waters of the Meadow Valley Wash system of which Camp Valley Creek is a part and is therefore not the final user of the waters of the stream system. The State Engineer

⁹ File No. 62331, official records in the Office of the State Engineer.

finds that the Applicant is not the final user of the water of Camp Valley Creek due to Camp Valley Creek's connection to the Meadow Valley Wash System as a whole.

IV.

Application 66045 was filed to appropriate 2.0 cfs of surface water from Camp Valley Creek and tributaries for power generation. The water will be returned to the stream in the NE¼ NW¼ of Section 10, T.4N., R.69E., M.D.B.&M. Item number 8 on Application 66045, which is a description of the proposed works, provides that the "water will be diverted into existing irrigation works then into a 6" water line to a water wheel. Spent water drains back into [the] creek through pipe."² The State Engineer finds that Application 66045 is seeking to use water for hydro-electric power generation by diverting water through a power generating facility and then returning the water to the existing stream channel. The State Engineer finds that this non-consumptive use of the water resource will not conflict with existing rights and use of the water will not threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁰

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:¹¹

- 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 there are existing decreed rights on the Meadow Valley Wash system downstream of the Applicant's proposed point of diversion, which are served with water originating upstream on the system that percolates through the underlying

¹⁰ NRS Chapter 533.

¹¹ NRS § 533.370(2).

strata becoming subsurface flow. This subsurface flow resurfaces downstream serving these existing rights; therefore, the appropriation of this water will conflict with these existing decreed rights and as such there is no additional water available for appropriation.

IV.

The State Engineer concludes that the water requested for appropriation under Application 66045 is a non-consumptive use of the water resource and will not conflict with existing rights and the use of the water will not threaten to prove detrimental to the public interest.

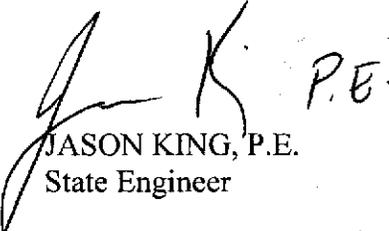
RULING

Application 66044 for irrigation purposes and Application 66046 for stock-watering purposes are hereby denied on the grounds that there is no additional unappropriated water at the proposed source and the approval of these applications would conflict with existing rights.

The protests to Application 66045 are overruled and the application is granted on the grounds that the use of water under Application 66045 is a non-consumptive use of the water resource, which will not conflict with existing rights and will not threaten to prove detrimental to the public interest. Application 66045 is granted subject to:

1. existing rights;
2. that no additional water is diverted for any other purpose than for power generation purposes;
3. the water diverted shall be returned to the source undiminished in quantity or quality; and
4. the payment of statutory permit fees.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 2nd day of
July, 2013.