

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

IN THE MATTER OF APPLICATIONS )  
79500, 79501 AND 79510 FILED TO )  
APPROPRIATE THE PUBLIC WATERS )  
OF KEEGAN HAYFIELD SPRINGS 1, 2 )  
AND 3 WITHIN THE SPRING VALLEY )  
HYDROGRAPHIC BASIN (184), WHITE )  
PINE COUNTY, NEVADA. )

**RULING**  
**#6242**

**GENERAL**

**I.**

Application 79500 was filed on February 11, 2010, by the Southern Nevada Water Authority (SNWA) to appropriate 2.0 cubic feet per second (cfs) of water from Keegan Hayfield Springs #2. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 36, T.19N., R.66E., M.D.B.&M. The proposed manner of use is described as being for the irrigation of 800 acres of land from January 1<sup>st</sup> to December 31<sup>st</sup> of each year. The proposed place of use is described as being located within the N $\frac{1}{2}$  NW $\frac{1}{4}$  (Lots 3 and 4) of Section 6, T.18N., R.67E., M.D.B.&M., W $\frac{1}{2}$  W $\frac{1}{2}$  (Lots 1, 2, 3 and 4), SE $\frac{1}{4}$  NW $\frac{1}{4}$ , E $\frac{1}{2}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 31, T.19N., R.67E., M.D.B.&M., and the E $\frac{1}{2}$  SW $\frac{1}{4}$ , E $\frac{1}{2}$  of Section 36, T.19N., R.66E., M.D.B.&M.<sup>1</sup>

**II.**

Application 79501 was filed on February 11, 2010, by SNWA to appropriate 2.0 cfs of water from Keegan Hayfield Springs #3. The proposed point of diversion is described as being located within SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 36, T.19N., R.66E., M.D.B.&M. The proposed manner of use is described as being for the irrigation of 800 acres of land from January 1<sup>st</sup> to December 31<sup>st</sup> of each year. The proposed place of use is described as being located within the N $\frac{1}{2}$  NW $\frac{1}{4}$  (Lots 3 and 4) of Section 6, T.18N., R.67E., M.D.B.&M., W $\frac{1}{2}$  W $\frac{1}{2}$  (Lots 1, 2, 3 and 4), SE $\frac{1}{4}$  NW $\frac{1}{4}$ , E $\frac{1}{2}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 31, T.19N., R.67E. M.D.B.&M., and the E $\frac{1}{2}$  SW $\frac{1}{4}$ , E $\frac{1}{2}$  of Section 36, T.19N., R.66E., M.D.B.&M.<sup>2</sup>

<sup>1</sup> File No. 79500, official records in the Office of the State Engineer.

<sup>2</sup> File No. 79501, official records in the Office of the State Engineer.

### III.

Application 79510 was filed on February 11, 2010, by SNWA to appropriate 2.0 cfs of water from Keegan Hayfield Springs #1. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 36 T.19N., R.66E., M.D.B.&M. The proposed manner of use is described as being for the irrigation of 800 acres of land from January 1<sup>st</sup> to December 31<sup>st</sup> of each year. The proposed place of use is described as being located within the N $\frac{1}{2}$  NW $\frac{1}{4}$  (Lots 3 and 4) of Section 6, T.18N., R.67E., M.D.B.&M., W $\frac{1}{2}$  W $\frac{1}{2}$  (Lots 1, 2, 3 and 4), SE $\frac{1}{4}$  NW $\frac{1}{4}$ , E $\frac{1}{2}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 31, T.19N., R.67E., and the E $\frac{1}{2}$  SW $\frac{1}{4}$ , E $\frac{1}{2}$  of Section 36, T.19N., R.66E., M.D.B.&M.<sup>3</sup>

### IV.

Applications 79500, 79501 and 79510 were timely protested by Great Basin Water Network, the Confederated Tribes of the Goshute Reservation, White Pine County, Henry C. Volger, IV, the Center for Biological Diversity, the Ely Shoshone Tribe, U.S. Fish and Wildlife Service and the Long Now Foundation on the following summarized grounds, but are not limited to:

1. There is not a sufficient amount of water in the proposed source of supply.
2. The application and proposed use would conflict with existing water rights and impermissibly diminish the sources of and protectable interests in domestic wells.
3. The application and proposed export of water would be detrimental to the public on environmental grounds and would be environmentally unsound.
4. The appropriation and proposed export of water would have an adverse effect on wildlife.
5. The appropriation and export of water would be detrimental to the public interest on economic grounds and would limit future growth in the basin.
6. The need for interbasin transfer of water is not justified and is harmful to the basins of origin as well as the public interest.
7. The application and proposed use would have detrimental impacts on cultural, historic, religious, traditional, aboriginal and ancestral lands and sites and would harm the public interest.
8. The application and proposed use would violate federal law enacted to preserve cultural, historic, religious, traditional, aboriginal and ancestral lands and sites.
9. The Applicant has not executed a proper conservation plan to protect the affected basins.
10. The application and proposed use is not an appropriate long-term use of the State of Nevada's water.
11. The application and proposed use would violate the Tribe's sovereign ability to regulate its territory.

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<sup>3</sup> File No. 79510, official records in the Office of the State Engineer.

12. The application and proposed use would thwart the federal trust responsibility toward the tribe and tribal resources.
13. The appropriation and export of water proposed in this application would violate the Tribe's reserved water rights and would thwart the intent of the tribal rights doctrine.
14. Granting this application will cause injury to U.S. Fish and Wildlife Service's senior water rights for water on the Fish Springs National Wildlife Refuge and the Endangered Species Act.

**V.**

Applications 79500 and 79510 were timely protested by Bruce Eldridge and Amanda Hilton on grounds that the proposed appropriations/changes conflict with existing water rights.

**VI.**

Application 79500 was timely protested by George Eldridge & Son, Inc. on the following ground:

One of Southern Nevada Water Authority's predecessors, Reed B. Robison, signed an agreement with George Eldridge & Son, Inc in 1982 which designated Keegan Hayfield Spring #2 a spring any rights to which Mr. Robison held were relinquished to George Eldridge & Son, Inc. That agreement was filed in the Nevada State Engineer's Office. That agreement was filed in the Nevada State Engineer's Office. [sic] To grant this application establishing a prescriptive right would not be in the public interest due to its being contrary to that agreement, its potential for creating turmoil over a settled-water-rights matter, and its impairment of pre-existing rights.

George Eldridge & Son, Inc., also timely protested Application 79510 on the same ground, except that it identified Keegan Hayfield Spring #1 as the subject of the agreement with Reed Robison.

**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 Applications 79500, 79501 and 79510 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, which is not the subject of these applications. The State Engineer finds that NRS § 533.370(3) addresses the interbasin transfer of groundwater. Applications 79500, 79501 and 79510 are requesting new appropriations from surface water sources and therefore, protest grounds pertaining to groundwater or interbasin transfers are not germane to Applications 79500, 79501 and 79510.

## 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 water source in question. The Office of the State Engineer has created and maintains a water rights database to allow research of existing water rights. The State Engineer conducted a recent review of this database and finds there are no existing water rights on Keegan Hayfield Springs #1, #2 and #3.

## IV.

On May 8, 2013, personnel from the Office of the State Engineer conducted Field Investigation No. 1178 of Keegan Hayfield Springs #1, #2 and #3 in addition to another similar unnamed spring system located approximately 1 mile to the south of the Hayfield Springs area.<sup>4</sup> At the time of Field Investigation No. 1178, no measureable water was found at the points of diversion of Application 79501 (Keegan Hayfield Springs #3) and Application 79510 (Keegan Hayfield Springs #1). The State Engineer finds that the points of diversion of Application 79501 (Keegan Hayfield Springs #3) and Application 79510 (Keegan Hayfield Springs #1) cannot produce a reasonably sufficient diversion or duty to irrigate the requested 800 acres. The State Engineer finds that there is insufficient water at the source.

## V.

The State Engineer finds that at the time of Field Investigation No. 1178 that Keegan Hayfield Springs #2 had a measurable flow of 0.0095 cfs. The unnamed spring system, which is

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<sup>4</sup> Report of Field Investigation No. 1178, dated May 8, 2013, official records in the Office of the State Engineer.

located approximately 1 mile south, has been periodically measured from August 2007 through May 2013 with a measured flow as high as 1.18 cfs and as low as 0.42 cfs, showing a factor of approximately 3 between low and high flow. The State Engineer finds that applying this factor of 3 to the May 2013 Keegan Hayfield Spring #2 flow of 0.0095 cfs results in an estimated diversion rate of 0.0285 cfs, calculated as an annual duty of 20 afa for Application 79500.

#### VI.

The State Engineer finds that SNWA's predecessors in interest, Reed B. Robison, signed an agreement with George Eldridge & Son, Inc. on May 28, 1992, in which "Robison transfers to George Eldridge & Son, Inc. ... Applications 26398 and 26399 (#2 and #1 North Keegan Hayfield Springs)." That agreement was filed in the Office of the State Engineer on June 1, 1992.<sup>5</sup> The State Engineer finds that Applications 26398 and 26399 were later assigned to SNWA who then withdrew them by letter on February 14, 2013.

### CONCLUSIONS

#### I.

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

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>7</sup>

- 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 many of the protest grounds excepting Protestants Bruce Eldridge and Amanda Hilton, George Eldridge & Son, Inc., and U.S. Fish and Wildlife

<sup>5</sup> File Nos. 26389 and 26399, official records in the Office of the State Engineer.

<sup>6</sup> NRS Chapter 533.

<sup>7</sup> NRS § 533.370(2).

Service, concern underground water and the interbasin transfer of water for municipal use - not surface water for irrigation; therefore, these protest grounds are without merit.

**IV.**

The State Engineer concludes that considering the stream flow measurement of 0.0095 cfs from the Field Investigation No. 1178, and applying the comparison factor of 3 between low and high flow, the maximum reasonable flow from Keegan Springs #2 is 0.0285 cfs. When expanded to an annual duty, 20 afa of water is available for appropriation under Application 79500.

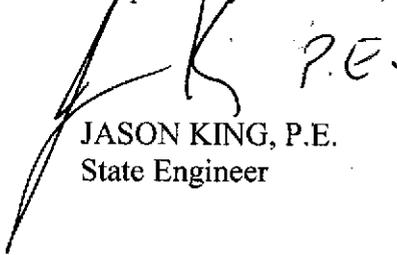
**V.**

The State Engineer concludes that for Application 79501 (Keegan Hayfield Springs #3) and Application 79510 (Keegan Hayfield Springs #1) there is no water available for appropriation at the proposed source.

**RULING**

The protests to Application 79500 are overruled and Application 79500 is hereby approved for 20 afa for irrigation use subject to payment of the statutory fees. Applications 79501 and 79510 are hereby denied on the grounds that there is insufficient water at the source and their approval would 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 29th day of  
October, 2013.