

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

IN THE MATTER OF APPLICATIONS)
78777, 78778, 78779 AND 78780 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF SNAKE CREEK, ROWLAND)
SPRINGS, LEHMAN CREEK, AND)
BAKER CREEK WITHIN THE SNAKE)
VALLEY HYDROGRAPHIC BASIN (195),)
WHITE PINE COUNTY, NEVADA.)

**This Ruling is
WITHDRAWN
and replaced by Ruling #6324**

RULING

#6269

GENERAL

I.

Application 78777 was filed on August 5, 2009, by the United States of America, National Park Service (NPS) to appropriate 1.0 cubic feet per second (cfs) of non-consumptive instream flow during the months of April, then September through November, and also seeks to appropriate 3.5 cfs of non-consumptive instream flow for the months of May through August from the waters of Snake Creek. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T.12N., R.70E., M.D.B.&M. The manner of use is described as recreation, including maintenance of aquatic habitat and further described in the Remarks section of the Application as the support of wildlife, fisheries, recreation and riparian vegetation. The proposed place of use is described as lying within the bed and banks of Snake Creek, located within Sections 17 and 18, T.12N., R.70E., M.D.B.&M.¹

II.

Application 78778 was filed on August 5, 2009, by NPS to appropriate 2.7 cfs of non-consumptive instream flow from Rowland Springs from January 1 through December 31 each year. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.13N., R.69E., M.D.B.&M. The manner of use is described as recreation, including maintenance of aquatic habitat and further described in the Remarks section of the Application as the support of wildlife, fisheries, recreation and riparian vegetation. The proposed place of use is described as being that part of the Rowland Springs streams, stream channels and surrounding

¹ File No. 78777, official records in the Office of the State Engineer.

seep areas lying within the boundaries of the Great Basin National Park, located within the SE¼ SE¼ of Section 10, T.13N., R.69E., M.D.B.&M.²

III.

Application 78779 was filed on August 5, 2009, by NPS to appropriate 3.0 cfs of non-consumptive instream flow during the months of September through April, and also seeks to appropriate 9.9 cfs of non-consumptive instream flow for the months of May through August from the waters of Lehman Creek. The proposed point of diversion is described as being within the NW¼ SE¼ of Section 10, T.13N., R.69E., M.D.B.&M. The manner of use is described as recreation, including maintenance of aquatic habitat and further described in the Remarks section of the Application as the support of wildlife, fisheries, recreation and riparian vegetation. The proposed place of use is described as lying within the bed and banks of Lehman Creek, located within Sections 9 and 10, T.13N., R.69E., M.D.B.&M.³

IV.

Application 78780 was filed on August 5, 2009, by NPS to appropriate 5.1 cfs of non-consumptive instream flow during the months of September through April, and also seeks to appropriate 17.1 cfs of non-consumptive instream flow for the months of May through August from the waters of Baker Creek. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 23, T.13N., R.69E., M.D.B.&M. The manner of use is described as recreation, including maintenance of aquatic habitat and further described in the Remarks section of the Application as the support of wildlife, fisheries, recreation and riparian vegetation. The proposed place of use is described as lying within the bed and banks of Baker Creek, located within the N½ of Sections 21 and 22, T.13N., R.69E., M.D.B.&M.⁴

V.

Applications 78777, 78778, 78779 and 78780 were timely protested by Baker Ranches, Inc. on the grounds that granting the applications would conflict with existing rights, threaten to prove detrimental to the public interest, and because there is no unappropriated water at the proposed source. Baker Ranches, Inc. subsequently agreed to withdraw its protest subject to conditions included in a stipulation reached between it and the Applicant.^{1,2,3,4}

² File No. 78778, official records in the Office of the State Engineer.

³ File No. 78779, official records in the Office of the State Engineer.

⁴ File No. 78780, official records in the Office of the State Engineer.

VI.

Applications 78777, 78778, 78779 and 78780 were timely protested by the Southern Nevada Water Authority (SNWA) on the grounds that there is either insufficient or no unappropriated water at the source, the proposed use may conflict or interfere with existing rights, and over appropriation of the stream would prove detrimental to the public interest.^{1,2,3,4}

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, in the case of protested Applications 78777, 78778, 78779 and 78780, 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.

The points of diversion and places of use of the subject applications are entirely within the Great Basin National Park, which is under the jurisdiction of the Applicant. The State Engineer finds that NPS's requested appropriations for non-consumptive instream flow rights by the federal agency charged with the management of Nevada's only national park for the stated manner of use, to be a beneficial use.

III.

On December 16, 2013, the Applicant filed a Notice of Stipulation for the subject applications between the Applicant and the Protestant, Baker Ranches, Inc. The Stipulation proposes to resolve the protest issues filed by Baker Ranches, Inc., by requesting the inclusion of certain terms in any permit(s) the State Engineer issues. Pursuant to NAC § 533.150, upon the filing of the Stipulation with the Office of the State Engineer, the protest of Baker Ranches, Inc. to the subject applications may be deemed withdrawn. The State Engineer finds that he is not party to the Stipulation and is not bound by an agreement between the Applicant and Baker Ranches, Inc.; however, the State Engineer finds that the terms requested by the Stipulation are not incompatible with permit terms that may be included for non-consumptive instream flow rights and the State Engineer finds the Stipulation acceptable in this case.

IV.

On or about October 16, 1934, the Baker and Lehman Creek stream system was fully appropriated by an adjudication of the stream system pursuant to NRS § 533.090, *et seq.*⁵ While no water is available to be appropriated for a consumptive use, the State Engineer finds that the non-consumptive appropriation of water as requested in these applications is in the public interest and will not threaten to prove detrimental to the public interest.

V.

The headwaters of Snake Creek, Rowland Springs, Lehman Creek, and Baker Creek originate from within the Wheeler Peak Scenic Area, which lies wholly within the Great Basin National Park. Snake Creek and Baker Creek originate near Pyramid Peak. Rowland Springs is tributary to Lehman Creek and lies within the national park. The headwaters of Lehman Creek originate on Bald Mountain, which is also within the Park.

The point of diversion of Permit 20794, Certificate 7573 is described as being located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T.13N., R.69E., M.D.B.&M., and the source is Cave Spring, which is tributary to Baker-Lehman Creek. This right is upstream from Applications 78778 and 78779, however, Permit 20794, Certificate 7573 is owned by NPS.

The point of diversion of vested claim V01064 is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.13N., R.69E., M.D.B.&M., and the source is described as being Lehman Spring. The point of diversion of Permit 45518 is described as being located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T.13N., R.69E., M.D.B.&M., and the source is described as being Rowland Springs. Lehman Spring and Rowland Springs appear to be one-and-the-same spring system. Vested claim V01064 and Permit 45518 are owned by Baker Ranches, Inc.

The point of diversion of Permit 45974, also owned by Baker Ranches, Inc., is described as being located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T.13N., R.69E., M.D.B.&M., and is described as being Lehman Creek and tributaries and is located nearby, but downstream to vested claim V01064 and Applications 78778 and 78779.

⁵ Finding of Fact, Conclusions of Law and Decree, *In the Matter of the Determination of the Relative Rights in and to the Waters of Baker and Lehman Creeks and Tributaries in the County of White Pine, Nevada*, Seventh Judicial District Court of the State of Nevada, In and For the County of White Pine, October 16, 1935 (as amended *nunc pro tunc* February 3, 1950).

The point of diversion and place of use of Application 78777 is located at an upstream location on the creek and no other water user has access above this point.

Other appropriative rights on the sources are either owned by NPS or Baker Ranches, Inc., whose protest was withdrawn upon the Stipulation discussed in the foregoing findings.

The State Engineer finds that the beneficial use described in the applications is non-consumptive and with no depletion of water, existing rights will not be impaired.

VI.

The Protestant, SNWA, does not possess any permitted and/or certificated water rights in the Snake Valley Hydrographic Basin.⁶ The State Engineer finds that all of SNWA's grounds for protest have been addressed by the findings listed above, and that SNWA's protest is without merit and is hereby overruled.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁸

- 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 the granting of Applications 78777, 78778, 78779 and 78780 will not conflict with existing rights on Snake Creek, Rowland Springs, Lehman Creek, or Baker Creek.

⁶ Nevada Division of Water Resources' Water Rights Database, February 11, 2014, official records of the State Engineer.

⁷ NRS Chapter 533.

⁸ NRS 533.370(2).

IV.

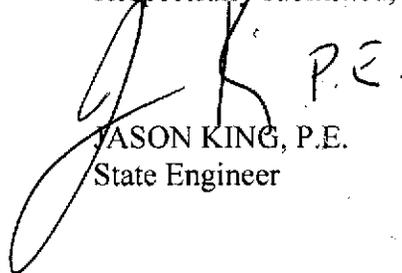
The State Engineer concludes that the non-consumptive use of water for recreation and maintenance of aquatic habitat in the Great Basin National Park will not prove detrimental to the public interest.

RULING

The protest is hereby overruled and Applications 78777, 78778, 78779 and 78780 are granted subject to the following:

1. Payment of statutory fees;
2. Existing rights on Snake Creek, Rowland Springs, Lehman Creek, or Baker Creek;
3. The non-consumptive use of water appropriated;
4. The entire natural flow appropriated, other than natural existing losses from evapotranspiration from vegetation and recharge to groundwater, exiting the place of use undiverted; and
5. The amount, point of diversion, place and manner of use of water as described in the terms of the permit may not be changed.

Respectfully submitted,

 P.E.
JASON KING, P.E.
State Engineer

Dated this 7th day of
March, 2014.