

**IN THE OFFICE OF THE STATE ENGINEER**

IN THE MATTER OF APPLICATIONS 42921,  
35803, 34911, 34912, 31561, 31562 AND 30223)  
FILED TO APPROPRIATE WATER FROM)  
MARTIN CREEK, PENROD CREEK OR THEIR)  
TRIBUTARIES IN ELKO COUNTY, NEVADA. )

**SUPPLEMENTAL  
RULING**

**GENERAL**

**I.**

Application 35803 was filed on August 23, 1978, by Raymond Y. and Toni Mendive to appropriate 1.0 c.f.s. of water from Martin Creek for irrigation purposes on 176.5 acres within portions of Section 26 and Section 27, T.44N., R.56E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 28, T.45N., R.56E., M.D.B.&M.<sup>1</sup>

Application 34912 was filed On January 24, 1978, by Elko Supply Co. to appropriate 2.0 c.f.s. of water from Big Bend Creek for irrigation purposes on 40 acres within the W1/2 SE1/4; SE1/4 SE1/4 of Section 32, T.45N., R.56E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 32, T.45N., R.56E., M.D.B.&M.<sup>1</sup>

Application 34911 was filed on January 24, 1978, by Elko Supply Co. to appropriate 2.0 c.f.s. of water from Martin Creek for irrigation purposes on 40 acres within the W1/2 SE1/4, SW1/4 SE1/4 of Section 32, T.45N., R.56E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NE1/4 Section 32, T.45N., R.56E., M.D.B.&M.<sup>1</sup>

Application 31561 was filed on May 9, 1977, by Robert M. and Donna Marie Schmidlein to appropriate 6 c.f.s. of water from Flannigan Gulch Creek for irrigation purposes on 336.293 acres within portions of Section 8, Section 17 and Section 18, T.44N., R.56E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NW1/4 Section 17, T.44N., R.56E., M.D.B.&M.<sup>1</sup>

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<sup>1</sup> Public record in the office of the State Engineer.

Application 31562 was filed on May 9, 1977, by Robert M. and Donna Marie Schmidlein to appropriate 6 c.f.s. of water from Martin Creek for irrigation purposes on 336.293 acres within portions of Section 8, Section 17 and Section 18, T.44N., R.56E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SW1/4 Section 8, T.44N., R.56E., M.D.B.&M.<sup>1</sup>

Application 30223 was filed on May 5, 1976 by Diamond Jim Mining Co. to appropriate .08 c.f.s. of water from Martin Creek for mining, milling and domestic purposes within the NW1/4 NW1/4 of Section 34, T.45N., R.56E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 33, T.45N., R.56E., M.D.B.&M.<sup>1</sup>

Application 42921 was filed on December 5, 1980, by United States of America Forest Service to appropriate .02 c.f.s. of water from Big Bend Spring for recreation purposes within the SW1/4 NE1/4 of Section 30, T.45N., R.56E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NW1/4 Section 30, T.45N., R.56E., M.D.B.&M.<sup>1</sup>

## II.

Applications 35803 and 42921 were protested by Robert M. and Donna Marie Schmidlein on the following grounds:<sup>2</sup>

1. "Protestant holds vested and other water rights on Martin Creek. Granting of said application will reduce waters now being used by protestant."
2. "There is insufficient waters to satisfy protestants prior users and applicants."
3. "Protestant diverts water downstream from the applicant's point of diversion and will be adversely affected by applicants diversion."

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<sup>2</sup> Protests in the respective files are public record in the office of the State Engineer.

Applications 34911 and 34912 were protested by Ellison Ranching Co. on the following grounds:<sup>2</sup>

1. "Protestant holds vested and other water rights on Martin Creek. Granting of said application will reduce waters now being used by protestant."
2. "There is (sic) insuggicient waters to satisgfy protestant's prior users and applicants."
3. "Protestant diverts water downstream from applicant's point of diversion and will be sdversely affected by applicant's diverison."

Applications 31561 and 31562 were protested by Raymond Y. and Toni C. Mendive on the following grounds:<sup>2</sup>

1. "Protestant holds vested and other water rights on Penrod Creek of which Martin Creek is a tributary and from Martin Creek. Granting of said application will reduce waters now being used by protestant."
2. "There is insufficient waters to satisfy protestant's prior users and applicants."
3. Protestant diverts water downstream from the applicant's point of diversion and will adversely (sic) affected by applicant's diversion."

Applications 31561 and 31562 were also informally protested by the Ellison Ranching Co.<sup>2</sup>

FINDINGS OF FACT

I.

All of the above sources of water described in the subject applications make up a system of springs and streams that are tributary to the Owyhee River. There are numerous claims of vested rights and certificates on the main stem of the Owyhee River.<sup>3</sup>

II.

The State Engineer's records disclose the following existing water rights on the Owyhee River or tributaries.<sup>1</sup>:

RIGHTS ON TRIBUTARIES TO PENROD CREEK

<u>Permit or Claim</u>	<u>Certificate</u>			
01246		Martin Creek	75 c.f.s.	115.33 acres
01247		Martin Creek	75 c.f.s.	34.4 acres
02907		Martin Creek	1 c.f.s.	95.4 acres
04072		Martin Creek	.05 c.f.s.	900 cattle
04080		Martin Creek	.05 c.f.s.	900 cattle
30129	1064	Gold Creek	.811 c.f.s.	81.1 acres
5219	1049	Gold Creek	.293 c.f.s.	29.3 acres
5220	1050	Gold Creek	.503 c.f.s.	50.3 acres

RIGHTS ON PENROD CREEK, TRIBUTARY TO THE OWYHEE RIVER

<u>Permit or Claim</u>	<u>Certificate</u>			
01462		Penrod Creek		60 acres
02871		Penrod Creek	1 c.f.s.	95.4 acres

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<sup>3</sup> U.S.G.S. 15-minute Quadrangle Maps entitled Wild Horse, Rowland and Mt. Velma.

RIGHTS ON OWYHEE RIVER

<u>Permit</u> <u>or Claim</u>	<u>Certificate</u>			
02276		Owyhee River	1.0 c.f.s.	143.57 acres
02277		Owyhee River	1.0 c.f.s.	72.37 acres
02863		Owyhee River	1.0 c.f.s.	285 acres
03706		Owyhee River	2.5 c.f.s.	34.15 acres
03707		Owyhee River	2.5 c.f.s.	100 acres
10203	2685	Owyhee River	.333 c.f.s.	mining & milling

III.

Flow records and other data available to the State Engineer on the Owyhee River and tributaries provide substantial evidence that the approval of the subject applications would conflict with and impair existing rights.<sup>1</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.<sup>4</sup>

II.

The State Engineer is prohibited by law from granting a permit under and application to appropriate the public waters where<sup>5</sup>:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use or change conflicts with existing rights, or

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<sup>4</sup> NRS Chapter 533.

<sup>5</sup> NRS Chapter 533.370.

- C. The proposed use or change threatens to prove detrimental to the public interest.

**III.**

The State Engineer concludes that the approval of Applications 42921, 35803, 34911, 34912, 31561, 31562 and 30223 would conflict with and impair existing rights on the Owyhee River and tributaries in Nevada.

**RULING**

The protests to Applications 35803, 34911, 34912, 31561, 31562 and 42921 are hereby upheld and these applications as well as 30223 are hereby denied on the grounds that to approve them would interfere with existing rights. This Supplemental Ruling is issued because the State Engineer inadvertently omitted the protest to Application 42921 in the Findings of Fact.

Respectfully submitted,



Peter G. Morros  
State Engineer

PGM/RMT/bk

Dated this 28th day of  
February, 1989.