

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

IN THE MATTER OF APPLICATION 70508 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF PIGEON SPRING WITHIN THE )  
FISH LAKE VALLEY HYDROGRAPHIC )  
BASIN (117), ESMERALDA COUNTY, )  
NEVADA. )

RULING

# 5599

GENERAL

I.

Application 70508 was filed on October 10, 2003, by Christian V. Bramwell to appropriate 30.0 gallons per minute (gpm), not to exceed 10.0 million gallons annually, of water from a source identified upon the application as Pigeon Spring. The proposed manner and place of use is for wildlife and domestic purposes within the E½ NE¼ of Section 17, T.6S., R.39E., M.D.B.&M.<sup>1</sup>

II.

Application 70508 was timely protested by Joan Vogt on the grounds that the approval of the application would adversely affect existing water rights that she holds on the source.<sup>1</sup>

III.

The records of the Office of the State Engineer contain several variations in spelling for Pigeon Spring. For purposes of this ruling, the spring described by Application 70508 is the same water source as that found under Permit 9431 and Permit 25289, in addition to Proof V-04819.<sup>2,3,4</sup>

FINDINGS OF FACT

I.

When considering a protested water right application, the State Engineer has the authority to decide whether the existing record must be supplemented with testimony and evidence derived

<sup>1</sup> File No. 70508, official records in the Office of the State Engineer.

<sup>2</sup> File No. 9431, official records in the Office of the State Engineer.

<sup>3</sup> File No. 25289, official records in the Office of the State Engineer.

<sup>4</sup> File No. V-04819, official records in the Office of the State Engineer.

from a public hearing.<sup>5</sup> The State Engineer finds that records of the Office of the State Engineer contain sufficient information to develop a full understanding of the issues before him and that a public hearing in this matter is not required.

## II.

Before a water right application can be approved, it must be determined, in part, that:<sup>6</sup>

1. there is sufficient unappropriated water at the source to satisfy its proposed manner of use;
2. its approval would not conflict with existing water rights that appropriate water from the proposed source.

The answer to the first question is easily found in a simple equation, which calculates the spring's committed resource and subtracts this sum from the measured spring flow. Determining the specific values of these two components is also a relatively simple exercise. The number representing the committed resource is found by adding the diversion rates of all existing water rights that appropriate water from Pigeon Spring. A search of the records of the Office of the State Engineer identified these water rights as Permit 9431, Certificate 2631, Permit 25289, Certificate 8700 and Proof V-04819. Permit 9431 is currently held by Jack and Joan Vogt, and it was certificated in the amount of 0.047 cubic feet per second (cfs), not to exceed 17.0 acre-feet per season for irrigation purposes. The irrigation season as it appears on the water right certificate is defined by the period beginning on April 1<sup>st</sup> and concluding on October 1<sup>st</sup>. Recognizing the fact that a domestic use of water was perfected under this permit, an additional 0.025 cfs was certificated by the State Engineer for domestic use.<sup>2</sup> Permit 25289 is also held under the Vogt name and was certificated for 0.0047 cfs to provide a year round stock water use from Pigeon Spring.

Proof V-04819, differs from the permitted water rights in that it is a claim of historic use of the waters of Pigeon Spring

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<sup>5</sup> NRS § 533.365(3).

<sup>6</sup> NRS § 533.370(4).

that occurred prior to the establishment of the State Engineer's permitting system in 1905. Its claim of an 1890 priority date for the use of Pigeon Spring water for stockwatering purposes has not been adjudicated to determine its validity and extent, but it is still considered an active filing. Under this proof, 0.04 cfs of water is purported to have been historically appropriated from Pigeon Spring.<sup>4</sup> With the exception of Application 70508, no other pending water right applications were found to exist at the spring.

Now that the existing water rights appurtenant to Pigeon Spring have been identified, the sum of their diversion rates and annual duties will determine the spring's committed resource. Since the 17.0 acre-feet of irrigation water perfected under Permit 9432, Certificate 2631 is seasonal, it only contributes to the springs committed resource from April 1<sup>st</sup> to October 1<sup>st</sup>. Based upon this assessment, two findings can be made by the State Engineer regarding the springs committed water resource. The first being that during the irrigation season existing appropriations reach a level of 0.1167 cfs, which equates to approximately 52.4 gpm. Secondly, the seasonal duty under Permit 9432, Certificate 2631 must be subtracted from the committed resource during the off season, lowering the committed resource to 0.0697 cfs or approximately 31.3 gpm.

### III.

The remaining half of the water equation is formulated from the record of the spring flow measurements for Pigeon Spring. Until recently, this record was represented by a few unquantified statements, found in letters received by the State Engineer. These letters, which are filed under several inactive water rights, predate the subject application by many years. The insight they provide regarding the development of the spring is valuable in a historic sense, but it does not represent an accurate accounting of the water produced by the spring.

A more recent estimate was provided by the applicant through correspondence dated May 5, 2004. A series of six flow

measurements were taken at the spring from August 19, 2003, up to May 3, 2004. The applicant measured the flow produced by the spring by employing a five-gallon bucket and stopwatch, which is a common method for determining the water produced by a small spring. An average flow of 19.93 gallons per minute (gpm) was measured by this method, to which the applicant added 4.5 gpm that he was unable to capture from the discharge channel. Adding the two components of the flow produces a total spring flow from Pigeon Spring equal to 24.43 gpm.

A second set of measurements was taken during an informal field investigation conducted at the spring by a representative of the Office of the State Engineer. These measurements, which are presented in Report of Field Investigation #1059, recorded a total flow of 12.0 gpm from Pigeon Spring.<sup>7</sup> The measurement taken by the State Engineer's office included the bypass flow and is 50% lower than the flow reported by the applicant only two weeks earlier.

It is unclear why the difference between the two sets of data is so great, given the simplicity and reliability of the technique used by the applicant and the Office of the State Engineer to measure the flow. A range this great cannot be attributed to seasonal variations since only two weeks separate the applicant's most recent measurement and that of the State Engineer's office. Nor can it be explained by differences in the measuring point locations, since there is only one discharge pipe, and it is assumed the applicant used this as his site. Whatever the reason for the discrepancy, the State Engineer accepts the findings and observations stated in Report of Field Investigation #1059, and finds that they represent a correct estimate of the amount of water produced by Pigeon Spring.

**v.**

It has already been determined that the sum of all existing water rights on Pigeon Spring reaches a maximum of 52.4 gpm

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<sup>7</sup> Report of Field Investigation No. 1059, official records in the Office of the State Engineer.

between April 1<sup>st</sup> and October 1<sup>st</sup> and a minimum of 31.3 during the non-irrigation season. Recently obtained field data, indicates that the flow generated by Pigeon Spring approximates 12.0 gpm. Even if the off season committed resource is used to determine the availability of unappropriated water, the 31.3 gpm held under existing water rights greatly exceeds the measured spring flow of 12.0 gpm. Based upon this analysis, the State Engineer finds that there is no unappropriated water available at the source to satisfy the water demand proposed under Application 70508.

**VI.**

The allocation of water from a surface source is accomplished on a priority system where first in time equates to first in use. In other words, a senior water right must be satisfied before water can be appropriated under a junior water right. The priority of a water right permit that was issued for a new appropriation of water is determined by the date it was filed in the Office of the State Engineer. The priority date for a claim of vested right, commonly referred to as a "Proof", is determined through the adjudication process. Having a priority date of October 10, 2003, Application 70508 represents that junior active water right filing on the spring. For this right to be in priority, Pigeon Spring would have to generate a sustained flow that exceeds the committed resource. Any appropriation of water by the junior user when the flow of the spring is below this level would be at the expense of senior rights. The State Engineer finds that the approval of Application 70508 would conflict with existing water rights on the source.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>8</sup>

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<sup>8</sup> NRS chapter 533.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>6</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 protectible 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.

RULING

The protest to Application 70508 is upheld and Application 70508 is hereby denied on the grounds that there is no unappropriated water at the source and that its approval would conflict with existing water rights.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/MB/jm

Dated this 16th day of  
March, 2006.