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

IN THE MATTER OF APPLICATION 38187 FILED TO APPROPRIATE THE PUBLIC WATERS OF CAVE CREEK WITHIN THE STEPTOE VALLEY HYDROGRAPHIC BASIN (179), WHITE PINE COUNTY, NEVADA.	))))))	**RULING** **#5946**

GENERAL

I.

Application 38187 was filed on May 15, 1979, by the State of Nevada, Department of Fish and Game to appropriate 5.0 cubic feet per second (cfs) of water from Cave Creek. The proposed manner of use is for fish, wildlife and recreation purposes and for storage of 784 acre-feet of water in Cave Creek Reservoir. The proposed place of use is within the SE¼ of Section 5, NE¼ NE¼ of Section 8, and the NW¼ NW¼ of Section 9, T.15N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 5, T.15N., R.65E., M.D.B.&M.[1]

II.

Application 38187 was timely protested by Ronald W. Jordan on the following grounds:

> There are no excess waters in Cave Creek to be appropriated. The granting of Application No. 38187 would interfere with the existing water rights; it would obstruct creek flow and there would be a loss of water due to evaporation and seepage; it would impair and invade established water rights.

FINDINGS OF FACT

I.

Application 16875 was filed on March 7, 1956, by the C-B Land & Cattle Company to appropriate 8.0 cfs of water from Steptoe Creek and its upper tributaries for irrigation and domestic purposes and to store water in Cave Creek Reservoir. The place of use is within the SW¼ SE¼, SE¼ SW¼, of Section 4, S½ SE¼, SE¼ SW¼ of Section 5, N½ NW¼, NE¼ NE¼ of Section 8, and the N½ NW¼ of Section 9, T.15N., R.65E., M.D.B.&M. The point of diversion is described as being located within the SE¼ NE¼ of Section 5, T.15N., R.65E.,

[1] File No. 38187, official records in the Office of the State Engineer.

M.D.B.&M. The State Engineer approved Permit 16875 on June 1, 1959 for "8.0 c.f.s. in a reservoir of undetermined capacity in acre-feet for the irrigation on 2,300 acres of land is issued subject to all existing rights on the source." The State Engineer finds Permit 16875 was cancelled by the State Engineer on August 4, 1969 because of failure of Permittee to comply with the provisions of the permit.[2]

II.

Application 24195 was filed on October 30, 1967, by Ronald Jordan to appropriate 2.0 cfs of water from Steptoe Slough for irrigation and domestic purposes for the irrigation of 90 acres. The place of use is within portions of the SW¼ NW¼, W½ SW¼, and the SE¼ SW¼ of Section 12, T.16N., R.63E., M.D.B.&M. The point of diversion is described as being located within the SE¼ SW¼ of Section 12, T.16N., R.63E., M.D.B.&M. The State Engineer finds Permit 24195 was approved on July 16, 1968, for 2.0 cfs, "...subject to all existing rights on the source." Certificate 8168 was issued on November 7, 1973, by the State Engineer for 2.0 cfs and not to exceed 148.92 acre-feet per annum for irrigation and domestic purposes.[3]

III.

Application 26335 was filed on September 28, 1971, by the State of Nevada, Department of Fish and Game to appropriate 5.0 cfs of water from Cave Creek for fish, wildlife and recreation purposes and for the storage of 784 acre-feet of water. The place of use is within the SE¼ of Section 5, NE¼ NE¼ of Section 8, and the NW¼ NW¼ of Section 9, T.15N., R.65E., M.D.B.&M. The point of diversion is described as being located within the SW¼ SE¼ of Section 5, T.15N., R.65E., M.D.B.&M. The State Engineer finds Permit 26335 was approved on August 23, 1972, for 5.0 cfs, and not to exceed 784 acre-feet per annum. Permit 26335 was cancelled by the State Engineer on March 26, 1979, because of failure of Permittee to comply with the provisions of the permit.[4]

IV.

Application 38187 was filed by the State of Nevada, Department of Fish and Game to appropriate 5.0 cfs of water from Cave Creek for fish, wildlife and recreation purposes and for storage of 784 acre-feet of water. Application 38187 was filed less than two months after the cancellation of Permit 26335. The State Engineer finds it appears the intent of Application 38187 is to identically replace cancelled Permit 26335.

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[2] File No. 16875, official records in the Office of the State Engineer.
[3] File No. 24195, official records in the Office of the State Engineer.
[4] File No. 26335, official records in the Office of the State Engineer.

V.

In regards to the protest claim that granting Application 38187 would interfere with existing rights, Cave Creek Reservoir was in place prior to the issuance of Permit 24195; therefore, the stream obstruction, seepage and evaporation concerns with respect to Permit 24195 were already present on Cave Creek. The Protestant's agent at the field investigation of June 5, 1980, made his position clear that the Cave Creek reservoir was acceptable to him. His concern was that in the future a dam might be constructed at a location known as the narrows. There are no current plans for a dam near the narrows.

As to the issue that granting Application 38187 "would obstruct creek flows." A storage right allows for a maximum diversion rate to enable the Permittee to fill or drawdown the reservoir for common uses such as; irrigation season, dam maintenance or habitat improvement.

As to the issue that granting Application 38187 "would impair and invade established water rights." All surface water rights issued by the State Engineer includes the term "subject to all existing rights on the source."

The State Engineer finds that Cave Lake Reservoir has been in existence prior to Application 38187 as evidenced by cancelled Permits 16875 and 26335. The issues raised in the protest were in existence prior to Application 38187. The State Engineer concludes that the conditions of streamflow obstructions, existing rights, seepage and evaporation in the protest were present prior to Application 38187.

VI.

The State Engineer finds Application 38187 would have a neglible effect on conditions of streamflow obstructions, existing rights, seepage and evaporation. The State Engineer finds that under reasonable steady state conditions the inflow to the reservoir will very nearly match the outflow less seepage and evaporation, which was present at Cave Creek Reservoir prior to Permit 24195.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[5]

[5] NRS chapter 533.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate public waters where:[6]

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.

III.

The State Engineer concludes there is unappropriated water in the sources, the proposed use will not conflict with existing rights or threaten to prove detrimental to the public interest.

RULING

The protest to Application 38187 is hereby overruled and Application 38187 is granted subject to existing rights and payment of statutory fees.

Respectfully submitted,

TRACY TAYLOR, P.E.
FOR State Engineer

TT/KMH/jm

Dated this 11th day of

February, 2009.

[6] NRS § 533.370(5).