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

IN THE MATTER OF APPLICATIONS)
76555, 76557, 76558, 76559, 76560, 76561,)
76562, 76568, 76569, 76570, 76571, 76572,)
76573, 76578, 76579, 76580, 76581, 76582)
AND 76583 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF NUMEROUS)
SPRING AND STREAM SOURCES)
WITHIN THE STEPTOE VALLEY)
HYDROGRAPHIC BASIN (179), WHITE)
PINE COUNTY, NEVADA.)

RULING

#6052

GENERAL

I.

Application 76555 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0135 cubic feet per second (cfs) of water from Spring 1. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within the NE¼ SW¼ of Section 36, T.17N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 36, T.17N., R.64E., M.D.B.&M.[1]

II.

Application 76557 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0116 cfs of water from Spring 3. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within the SE¼ SW¼ of Section 1, T.16N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SW¼ of Section 1, T.16N., R.64E., M.D.B.&M.[2]

III.

Application 76558 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0116 cfs of water from Spring 4. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within

[1] File No. 76555, official records in the Office of the State Engineer.
[2] File No. 76557, official records in the Office of the State Engineer.

the NW¼ NE¼ of Section 12, T.16N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 12, T.16N., R.64E., M.D.B.&M.[3]

IV.

Application 76559 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0116 cfs of water from Mosier Spring. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within the NE¼ NE¼ of Section 23, T.16N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 23, T.16N., R.64E., M.D.B.&M.[4]

V.

Application 76560 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0135 cfs of water from Spring 6. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within the SE¼ NE¼ of Section 6, T.16N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NE¼ of Section 6, T.16N., R.65E., M.D.B.&M.[5]

VI.

Application 76561 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0135 cfs of water from Spring 7. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within the SE¼ NE¼ of Section 6, T.16N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NE¼ of Section 6, T.16N., R.65E., M.D.B.&M.[6]

VII.

Application 76562 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0116 cfs of water from Spring 8. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within the NE¼ SW¼ of Section 6, T.16N., R.65E., M.D.B.&M. The proposed point of

[3] File No. 76558, official records in the Office of the State Engineer.
[4] File No. 76559, official records in the Office of the State Engineer.
[5] File No. 76560, official records in the Office of the State Engineer.
[6] File No. 76561, official records in the Office of the State Engineer.

diversion is described as being located within the NE¼ SW¼ of Section 6, T.16N., R.65E., M.D.B.&M.[7]

VIII.

Application 76568 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0135 cfs of water from Spring 14. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within the SW¼ NE¼ of Section 18, T.16N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 18, T.16N., R.65E., M.D.B.&M.[8]

IX.

Application 76569 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0135 cfs of water from Spring 15. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within the NW¼ SE¼ of Section 18, T.16N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 18, T.16N., R.65E., M.D.B.&M.[9]

X.

Application 76570 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0135 cfs of water from Spring 16. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within the SW¼ SE¼ of Section 18, T.16N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 18, T.16N., R.65E., M.D.B.&M.[10]

XI.

Application 76571 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.67 cfs of water from Steptoe Creek. The proposed manner of use is for recreation (fish propagation and snow making) purposes. The proposed place of use is described as being located within the SW¼ NE¼, SE¼ NE¼, NW¼ SE¼, NE¼ SE¼, SE¼ SE¼ of Section 13, portions of the NE¼ NE¼, SE¼ NE¼, SW¼ NE¼ of Section

[7] File No. 76562, official records in the Office of the State Engineer.
[8] File No. 76568, official records in the Office of the State Engineer.
[9] File No. 76569, official records in the Office of the State Engineer.
[10] File No. 76570, official records in the Office of the State Engineer.

24, T.16N., R.64E., portions of the SW¼ SW¼ SW¼ of Section 17, portions of the NW¼, SW¼ NE¼, SE¼ NE¼, all of the S½ of Section 18, the N½ of Section 19, the NW¼, SW¼ NE¼, E½ SW¼, W½ SE¼ of Section 20, T.16N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 18, T.16N., R.65E., M.D.B.&M.[11]

XII.

Application 76572 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0135 cfs of water from Steptoe Creek. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within the SE¼ SE¼ of Section 18, T.16N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 18, T.16N., R.65E., M.D.B.&M.[12]

XIII.

Application 76573 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0116 cfs of water from Aspen Spring. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within the NW¼ SE¼ of Section 19, T.16N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 19, T.16N., R.65E., M.D.B.&M.[13]

XIV.

Application 76578 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0116 cfs of water from Spring 23. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within Lot 10 of Section 31, T.17N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 10 of Section 31, T.17N., R.65E., M.D.B.&M.[14]

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[11] File No. 76571, official records in the Office of the State Engineer.
[12] File No. 76572, official records in the Office of the State Engineer.
[13] File No. 76573, official records in the Office of the State Engineer.
[14] File No. 76578, official records in the Office of the State Engineer.

XV.

Application 76579 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0116 cfs of water from Clear Spring. The proposed manner of use is for stock-watering purposes. The proposed place of use is described as being located within the SW¼ SE¼ of Section 32, T.16N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 32, T.16N., R.65E., M.D.B.&M.[15]

XVI.

Application 76580 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.67 cfs of water from Davis Canyon Creek. The proposed manner of use is for recreation (fish propagation and snow making) purposes. The proposed place of use is described as being located within the SE¼ NE¼, SW¼ NE¼, SE¼ NW¼, NE¼ NW¼, NW¼ NW¼, N½ NE¼ of Section 13, portions of the SW¼ SW¼, SE¼ SW¼, N½ SW¼, NW¼, NE¼, SE¼ of Section 12, portions of the SE¼ SE¼, NW¼ SE¼, SW¼ NE¼, SE¼ NW¼, NE¼ NW¼, NE¼ SE¼, SE¼ NE¼, N½ NE¼ of Section 11, SE¼ SE¼ of Section 1, T.16N., R.64E., and the W½, W½ E½, E½ NE¼ of Section 6, W½, W½ E½, of Section 7 and portions of the NW¼, NE¼ of Section 18, T.16N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 2 of Section 6, T.16N., R.65E., M.D.B.&M.[16]

XVII.

Application 76581 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0135 cfs of water from Davis Canyon Creek. The proposed manner of use is for stock-watering purposes. A dam will be built to store water and a portion will be used to water livestock. The proposed place of use is described as being located within the Lot 2 of Section 6, T.16N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 2 of Section 6, T.16N., R.65E., M.D.B.&M.[17]

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[15] File No. 76579, official records in the Office of the State Engineer.
[16] File No. 76580, official records in the Office of the State Engineer.
[17] File No. 76581, official records in the Office of the State Engineer.

XVIII.

Application 76582 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.0135 cfs of water from Bone Yard Creek. The proposed manner of use is for stock-watering purposes. A dam will be built to store water and a portion will be used to water livestock. The proposed place of use is described as being located within the NW¼ NE¼ of Section 36, T.17N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 36, T.17N., R.64E., M.D.B.&M.[18]

IXX.

Application 76583 was filed on December 24, 2007, by Blue Diamond Oil Corp. to appropriate 0.67 cfs of water from Bone Yard Creek. The proposed manner of use is for recreation (fish propagation and snow making) purposes. The proposed place of use is described as being located within portions of the SE¼ NE¼, SW¼ NE¼, SE¼ NW¼, NE¼ NW¼, NW¼ NW¼, N½ NE¼ of Section 13, portions of the SW¼ SW¼, SE¼ SW¼, N½ SW¼, NW¼, NE¼, SE¼ of Section 12, portions of the SE¼ SE¼, NW¼ SE¼, SW¼ NE¼, SE¼ NW¼, NE¼ NW¼, NE¼ SE¼, SE¼ NE¼, N½ NE¼ of Section 11, SE¼ SE¼ of Section 1, T.16N., R.64E., M.D.B.&M., and the W½, W½ E½, E½ NE¼ of Section 6, W½, W½ E½ of Section 7, and portions of the NW¼, NE¼ of Section 18, T.16N., R.65E., M.D.B.&M., and the W½ NE¼ of Section 36, T.17N., R.64 E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 36, T.17N., R.64E., M.D.B.&M.[19]

XX.

Application 76555 was timely protested by Nevada Department of Wildlife (NDOW) on the following grounds:[1]

> Spring provides perennial flow to sections of Bone Yard Canyon which are important to sage grouse, one of the largest elk herds in the State and a myriad of wildlife species. Diversion or use of waters for anything other than wildlife would significantly impact wildlife resource use of the area.

[18] File No. 76582, official records in the Office of the State Engineer.
[19] File No. 76583, official records in the Office of the State Engineer.

XXI.

Application 76557 was timely protested by the United States Forest Service (USFS) on the following grounds:[2]

1) This application interferes with our vested rights V03550 at the same location.
2) This application is being filed in designated basin 179, (preferred use, irrigation denied) Steptoe, here rights approach or exceed the estimated average annual recharge and the water resources are being depleted or require additional administration.
3) The Blue Diamond Oil Corp. is not authorized to construct what is being proposed in the application; therefore they will be unable to perfect, exercise or otherwise put the water to beneficial use they are seeking via application [76557, 76558, 76559, 76560, 76561, 76562, 76568, 76569, 76570, 76571, 76572, 76573, 76578, 76579, 76580, 76581, 76582 and 76583]. This application requests a permit to obtain a water right on federally managed lands.

XXII.

Applications 76558, 76559, 76562, 76568, 76569, 76570, 76571, 76573, 76578, 76580, 76581 and 76583 were timely protested by the USFS on the following grounds:[3, 4, 7, 8, 9, 10, 11, 13, 14, 16, 17, 19]

1) This application is being filed in designated basin 179, (preferred use, irrigation denied) Steptoe, here rights approach or exceed the estimated average annual recharge and the water resources are being depleted or require additional administration.
2) The Blue Diamond Oil Corp. is not authorized to construct what is being proposed in the application; therefore they will be unable to perfect, exercise or otherwise put the water to beneficial use they are seeking via application [76558, 76559, 76562, 76568, 76569, 76570, 76571, 76573, 76578, 76580, 76581, and 76583]. This application requests a permit to obtain a water right on federally managed lands.

XXIII.

Applications 76580 and 76583 were timely protested by the United States Department of the Interior, Bureau of Land Management (BLM) on the following grounds:[16, 19]

> The BLM has a congressionally mandated responsibility to protect springs and riparian habitat on Public Lands. There are Public Lands downstream of the applications. The above mentioned applications could result in effects on riparian habitat on Public Lands due to effects on in stream flow. Changes to stream flow could also affect wildlife habitat which BLM is responsible to manage. Additionally, Executive Order 13443 of August 16, 2007 requires Federal agencies to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat. Development by these applications could affect hunting opportunities negatively.

FINDINGS OF FACT

I.

Staff from the Office of the State Engineer conducted a field investigation at the proposed points of diversion during the week of August 10-14, 2009.[20] The purpose of this visit was to determine site characteristics, flow rates and Global Positioning System (GPS) locations of the points of diversion described under Applications 76310 (application withdrawn), Applications 76555 through 76564, 76566 through 76575 and 76577 through 76583. The State Engineer finds that many of the findings and the conclusions set forth in the Report of Field Investigation No. 1121 are incorporated into this ruling.

II.

The Duck Creek stream system was decreed by the Sixth Judicial District Court of the State of Nevada in and for the County of White Pine on November 26, 1886, in the matter of *Dick v. Odgen, et al.* ("Duck Creek Decree"). The Duck Creek Decree establishes priority for use of the water from this source for the irrigation of 1,323 acres of land during the decreed irrigation season. The Duck Creek Decree does not assign an annual duty of water for each crop classification nor does it provide legal descriptions of the decreed irrigated land. However, geographically 1,323 decreed acres are irrigated by Duck Creek and its tributaries. Therefore, the surface water used to irrigate said 1,323 acres of land includes, but is not limited to, the tributary waters of the Duck Creek stream system, which includes Spring 1, Spring 6, Spring 7, Davis Canyon Creek and Bone Yard Creek.

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[20] Report of Field Investigation No. 1121, File No. 76555, official records in the Office of the State Engineer.

To be able to quantify a reasonable duty required to satisfy decreed and permitted amounts by using a conservative duty of two acre-feet per acre as a duty over all the 1,323 acres, a reasonable duty of water calculates as follows: (1,323 acres)(2 acre-feet/ year) = 2,646 acre-feet/year. This duty calculates to a continuous annual flow of (2,646 acre-feet/year)/(723.97 acre-feet/year/cfs) = 3.65 cfs. Furthermore, considering a 168-day irrigation season (March 1st through August 15th or 168 days), it would require a seasonal flow of approximately (3.65 cfs)(365 days)/(168 days) = 7.94 cfs/season of continuous flow to satisfy the requirements of the Duck Creek Decree. In addition to the decreed acres listed in the Duck Creek Decree, a search of the water right database of the State Engineer's office identifies Kennecott Corporation and Kennecott Nevada Copper Corporation as the current owners of record 40.03 cfs of the flow of Duck Creek and tributaries under four different water rights, all of which are currently in good standing in the Office of the State Engineer.[21] All four of these filings have points of diversion that are approximately twelve miles downstream of the respective points of diversion described under Applications 76555, 76560, 76561, 76580, 76581, 76582 and 76583. If the diversion rates of all active decreed and permitted water rights that derive their appropriations from the Duck Creek stream system are added, the Duck Creek stream system is committed up to 47.97 cfs.

The places of use described in the Duck Creek Decree are downstream of the tributary Spring 1, Spring 6, Spring 7, Davis Canyon Creek and Bone Yard Creek, and any additional diversion from these tributaries to Duck Creek will decrease flow to the decreed downstream irrigators.

> Records of flow of Duck Creek, which includes that of its principle tributaries, Berry and Timber Creek, have been kept for some 30 years in connection with plant operations at McGill. Generally, flow in excess of 20 cfs is diverted past the point of measurement just upstream from Duck Creek Reservoir. Much of the low flow of Duck Creek tributaries, such as Timber Creek shown in the cover photograph, is carried in pipelines across the alluvial fans to reduce low-flow losses. Thus, the only record approximately represents natural flow conditions.[22]

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[21] File Nos. 557, 13936, 42102, 60489 and V-04550, official records in the Office of the State Engineer.
[22] Eakin, T.E., Hughes, J.L., and Moore, D.O., *Water-Resources Appraisal of Steptoe Valley, White Pine and Elko Counties, Nevada*, Water Resources-Reconnaissance Series Report 42, United States Geological Survey and Nevada Department of Conservation and Natural Resources, 1967, p. 16.

The completed Proof of Beneficial Use form filed in support of Permit 13936, Certificate 4012, states under Item 8 "High water in the Duck Creek ditch, during runoff periods probably exceeds 20 cfs," and under Item 11, "Flow varies greatly from spring runoff of great intensity to no flow in the summer or fall." The table below enumerates the current active water commitments for Duck Creek:

Water right	Diversion (cfs)
13936	5.0
42102	19.5
60489	4.5
V04550	11.03
Duck Creek Decree	7.94
Committed resource	47.97*

*Committed resource - the amount permitted by the State Engineer and includes estimated commitments under the Duck Creek Decree.

The State Engineer finds that for unappropriated water to be available from the Duck Creek stream system, its flow must be able to satisfy both the rights established by the Duck Creek Decree in addition to the 40.03 cfs held under active permits and certificates for a reasonable amount of time. With respect to the senior water rights in Duck Creek, the State Engineer finds the Duck Creek system to be fully appropriated with no additional water available for appropriation.

III.

Application 76555 has a proposed point of diversion at Spring 1 and was protested by the NDOW on grounds that "the spring provides perennial flow to sections of Bone Yard Canyon which are important to sage grouse, one of the largest elk herds in the State and a myriad of wildlife species. Diversion or use of waters for anything other than wildlife would significantly impact wildlife resource use of the area."[1]

Spring 1 arises in a small thicket in the Bone Yard Canyon stream channel and its modest flow submerges into the Bone Yard Canyon streambed almost immediately downstream.[20] Based on the findings of the field investigation and by inspection of United States Geological Survey topographic quad-maps on file in the Office of the State Engineer, the Bone Yard Canyon stream channel is tributary to Duck Creek; therefore, Spring 1 is also considered tributary to the head waters of the Duck Creek stream system.

The State Engineer finds that Spring 1 is tributary to the Duck Creek stream system, which is fully appropriated under existing water rights.

IV.

Applications 76557, 76558, 76559, 76562, 76568, 76569, 76570, 76571, 76573, 76578, 76580, 76581 and 76583 were protested by the USFS on grounds that these applications are being filed in a designated basin where rights approach or exceed the estimated average annual recharge and the water resources are being depleted or require additional administration. State Engineer's Order No. 731, described and designated the Steptoe Valley Hydrographic Basin as a groundwater basin in need of additional administration. The order pertains to groundwater only and does not address surface-water sources; therefore, the State Engineer finds this protest issue is without merit. The USFS protested that the Applicant is not authorized to construct the necessary works proposed in the applications; therefore, they will be unable to perfect, exercise or otherwise place the water to beneficial use. These applications request permits to obtain water rights where the places of use are on federally managed lands. The Applicant holds the grazing leases on the public lands in the areas of these applications.[20] The State Engineer finds that a water right application does not give a permittee any rights of ingress and egress and does not supersede local, state or federal permitting requirements; however, the Applicant is the authorized range user of the public lands and livestock on his allotments would have access to these surface water sources. If any of these applications are approved and require any development at the source, the issuance of a water right permit will not absolve the Applicant of any additional permitting requirements from other regulatory agencies, including the Protestant USFS.

V.

The State Engineer finds that Application 76560 with the point of diversion at Spring 6 is located on fee simple land owned by the Applicant. Spring 6 emanates from a large thicket adjacent to the Duck Creek stream channel where it ultimately comingles with the flow of the Duck Creek system.[20] The spring is not developed and the flow from Spring 6 was measured to be approximately 0.5 gpm. The State Engineer finds that Spring 6 is tributary to the Duck Creek stream system, which is fully appropriated under existing water rights.

VI.

Application 76561, with the point of diversion at Spring 7, is located on fee simple land owned by the Applicant. Based on the findings of the field investigation and by inspection of the USGS topographic quad maps on file in the Office of the State Engineer, the State Engineer finds the spring area is adjacent to the Duck Creek stream channel and flows into a fairly large muddy area where it ultimately comingles with the flow of the Duck Creek system.[20] The spring is not developed and a flow measurement was not possible due to the diffusion of the spring flow into the muddy area.[20] The maps clearly depict that the water from Spring 7 is tributary to the head waters of the Duck Creek stream system. The State Engineer finds that Spring 7 is tributary to the Duck Creek stream system, which is fully appropriated under existing water rights.

VII.

Application 76580 has a proposed point of diversion located at Davis Canyon Creek. Based on the findings of the field investigation and by inspection of the USGS topographic quad maps on file in the Office of the State Engineer, the State Engineer finds the proposed place of use is located on fee simple land and on land managed by the USFS. As noted in the field investigation, the spring is not developed and in mid-August Davis Canyon Creek was a dry streambed.[20] It is the Applicant's intention to construct a dam to impound the waters of Davis Canyon Creek. The State Engineer finds the construction of a dam on Davis Canyon Creek would impair the annual spring freshet, which must be allowed to pass through the Duck Creek stream system to the senior downstream water right users. The maps depict that the water from Davis Canyon Creek is tributary to the head waters of the Duck Creek stream system.[20] The State Engineer finds that Davis Canyon Creek is tributary to the Duck Creek stream system, which is fully appropriated under existing water rights.

VIII.

Application 76581, with the point of diversion at Davis Canyon Creek, is located on land managed by the USFS. As noted in the field investigation and by inspection of the USGS topographic quad maps on file in the Office of the State Engineer, Davis Canyon Creek was a dry streambed in mid-August. The maps depict that the water from Davis Canyon Creek is tributary to the head waters of the Duck Creek stream system.[20]

The State Engineer finds that Davis Canyon Creek is tributary to the Duck Creek stream system, which is fully appropriated under existing water rights.

It is the Applicant's intention to construct a dam to impound the waters of Davis Canyon Creek. The State Engineer finds the construction of a dam on Davis Canyon Creek would impair the spring freshet, which must be allowed to pass to the senior downstream water right users.

IX.

Applications 76582 and 76583 have proposed points of diversion located within Bone Yard Creek and proposed places of use located on fee simple land owned by the Applicant and on public land managed by the USFS. Bone Yard Creek was noted as being a dry streambed during the mid-August field investigation. Based on findings of the field investigation and by inspection of the USGS topographic quad maps on file in the Office of the State Engineer, State Engineer finds that Bone Yard Creek is tributary to the head waters of the Duck Creek stream system, which is fully appropriated under existing water rights.[20]

It is the Applicant's intention to construct a dam to impound the waters of Bone Yard Creek. The State Engineer finds the construction of a dam on Bone Yard Creek would impair the annual spring freshet, which must be allowed to pass to the senior downstream water right users.

X.

Application 76557 (Spring 3) is located on land managed by the USFS and was timely protested by the USFS on grounds, in part, that the application interferes with its vested right V-03550 at the same location. The field investigation found the spring improvements consisted of a spring box and stock troughs that had been damaged in a range fire some years ago. The spring flows from the end of a pipeline for about 50 feet along the ground before it is absorbed into the ground. The spring was measured at the end of the pipeline to flow approximately 5.5 gallons per minute (gpm).[20]

After comparing the descriptions of the points of diversion under Application 76557 and Proof of Appropriation V-03550, the State Engineer finds that the described point of diversion for Proof of Appropriation V-03550 is located within the SE¼ NE¼ of Section 12, T.16N., R.65E., M.D.B.&M., which is located within the Spring Valley Hydrographic Basin. The described point of diversion for Application 76557 is located

within the SE¼ SW¼ of Section 1, T.16N., R.64E., M.D.B.&M., which is located in the Steptoe Valley Hydrographic Basin. The State Engineer finds that these are two different sources of water in two different hydrographic basins.

A review of records on file in the Office of the State Engineer, indicate that there is an existing water right located at the same point of diversion as described by Application 76557, being claim of Vested Right V-03553. The State Engineer finds that V-03553 and Application 76557 do share a common point of diversion. Under the priority system, the senior water right must be fulfilled prior to the diversion of water for Application 76557. The amount of water claimed under V-03553 is 0.015 cfs or approximately 6.7 gpm. A comparison of the flow rate of the spring, 5.5 gpm, to the amount of water claimed under V-03553 indicates that there is insufficient water at the source to satisfy the additional appropriation of 5.2 gpm of water sought under Application 76557. The State Engineer finds there is insufficient flow at the spring to satisfy Application 76557 and the approval of any additional water would conflict with claimed existing water rights.

XI.

Application 76558 (Spring 4) is located on land managed by the USFS. The spring flow was measured to be approximately 2.7 gpm and does not constitute the entire output of the source. The spring flows into a grassy area where it is absorbed into the ground.[20] A search of the records of the Office of the State Engineer finds no other surface-water rights on this source. This spring is not developed and based upon the field investigation the State Engineer finds that Spring 4 is not tributary to another stream system. The State Engineer finds there is unappropriated water at the source and there are no other water rights on the source.

XII.

Application 76559 (Moiser Spring) is located on land managed by the USFS. The spring is developed by a spring box (which was not located) and a pipeline, which conveys water to a set of stock troughs. Another set of stock troughs, now abandoned and derelict, is located between the main spring area and the current active troughs. There is considerable surface flow through the large grassy area surrounding the spring and troughs. An accurate flow measurement was not possible at this site due to the diffusion of the stream channel into a series of rills in the grassy areas or the rocky streambed.[20] A search of the records of

the Office of the State Engineer revealed there is one other surface-water right on this source, Permit 373, Certificate 1, which was issued on December 20, 1911, for 0.022 cfs for stock-watering purposes. The point of diversion under Permit 373 is located within the SW¼ SW¼ of Section 13, T.16N., R.64E., M.D.B.&M., which is on private land. The point of diversion of Application 76559 is located downstream of the certificated point of diversion of Permit 373, Certificate 1. Based upon the field investigation, the State Engineer finds Moiser Spring is not tributary to another stream system.[20] The State Engineer finds that the approval of a downstream junior right would not adversely affect the single active water right on Mosier Spring.

XIII.

Application 76562 (Spring 8) is located on land managed by the USFS. The spring is developed by a spring box and short pipeline to some old troughs that are enclosed by an 8 foot game fence. Outflow from this spring area was measured in a small, narrow channel at 0.6 gpm using a V-notch weir.[20] A search of the records of the Office of the State Engineer finds no other surface-water rights on this source. There was no evidence of a defined stream channel to another stream. Based upon the findings of the field investigation, the State Engineer finds Spring 8 is not tributary to another stream system and that there is unappropriated water available from the source.

XIV.

Application 76568 (Spring 14) is located on land managed by the USFS. This spring is at the head of the main drainage that becomes Steptoe Creek. The spring is not developed. The spring flows downhill into a small grassy area and soon infiltrates into the ground. No measurement was taken. The field investigation revealed there was no evidence of a defined stream channel to Steptoe Creek, and therefore, the State Engineer finds that Spring 14 is not tributary to the Steptoe Creek stream system.[20] A search of the records of the Office of the State Engineer finds no other surface-water rights on this source. The State Engineer finds that there is water available for appropriation from Spring 14, and that the approval of Application 76568 would not adversely impact existing water rights.

XV.

Application 76569 (Spring 15) is located on land managed by the USFS. The spring is not developed. The spring flow infiltrates into the ground before reaching Steptoe Creek. The flow from Spring 15 was measured to be approximately 7.2 gpm. The field investigation revealed there was no evidence of a defined stream channel to Steptoe Creek, and therefore, this spring is not tributary to the Steptoe Creek stream system.[20] A search of the records of the Office of the State Engineer finds no other surface-water rights on this source. The State Engineer finds that there is water available for appropriation from Spring 15 and that the approval of Application 76569 would not adversely impact existing water rights.

XVI.

Application 76570 (Spring 16) is located on land managed by the USFS. The spring is not developed. The spring flow infiltrates into the ground before reaching Steptoe Creek. The spring flow from Spring 16 was measured to be approximately 1.2 gpm and does not constitute the entire output from the source. The field investigation revealed there was no evidence of a defined stream channel to Steptoe Creek, and therefore, this spring is not tributary to the Steptoe Creek stream system.[20] A search of the records of the Office of the State Engineer finds no other surface-water rights on this source. The State Engineer finds that there is water available for appropriation from Spring 16 and that the approval of Application 76570 would not adversely impact existing water rights.

XVII.

Steptoe Creek was decreed in the Fourth Judicial District Court of the State of Nevada in and for the County of White Pine on November 6, 1935, in the matter of *Shallenbarger v. Guptil, et al.* ("Steptoe Decree"). The Steptoe Decree provides by order that each and every water user is prevented from, at any time, diverting, using, preventing or obstructing the flow, in whole or in part, in or along its natural channel.

Published data available from the United States Geological Survey Water Resources Data, Nevada, Water Year 2003,[21] shows the maximum mean monthly flow of Steptoe Creek for the water years 1966-2003 in the month of June is 14.8 cfs. A search of the records of the Office of the State Engineer reveals the sum of the diversion rates for current vested, permitted and certificated water rights on Steptoe Creek for consumptive uses

comprised of irrigation and stock-watering purposes is 93.481cfs and a total committed diversion sum of 146.03 cfs.

Water right	Diversion (cfs)	Water right	Diversion (cfs)
10873	2	24195	2
10982	5	2583	1.271
12925	6.4	29669	10
12926	3	3231	24.971
12927	6	70193*	20.75
12928	3	70194*	0.9
12929	1	70197*	0.9
12930	6	70199*	30
12931	2	7585	3.017
1709	4.454	828	1.258
1866	12.11	Committed resource	146.031

*denotes non-consumptive use

Permit 70199 was approved on April 18, 2005, and was issued for 30.00 cfs of unappropriated flood waters of Steptoe Creek and its tributaries at a diversion rate in excess of 38.92 cfs up to a maximum of 68.92 cfs. The State Engineer finds the Steptoe Creek stream system is fully appropriated to a degree where applications requesting additional water from this source cannot be considered for approval.

XVIII.

Application 76571 (Steptoe Creek) has a point of diversion located on fee simple land owned by the Applicant. The place of use is located on both fee simple land and on land managed by the USFS. The flow of Steptoe Creek was measured to be approximately 165 gpm at the end of the outlet on the culvert into Steptoe Creek ½ mile downstream from the proposed dam site. The area in the vicinity of the proposed dam is undeveloped.[20] Application 76571 proposes to construct a dam to impound the waters of Steptoe Creek for recreation purposes. The State Engineer finds the construction of a dam on Steptoe Creek would impair the annual spring freshet, which must be allowed to pass to the senior

downstream water right users. The State Engineer finds that Steptoe Creek is fully appropriated under existing water rights and no unappropriated water is available.

XIX.

Application 76572 (Steptoe Creek) is located on fee simple land owned by the Applicant. and on land managed by the USFS. Application 76572 proposes to construct a dam to impound water for livestock. The area in the vicinity of the proposed dam is undeveloped. Steptoe Creek was measured at the outlet of a culvert on Steptoe Creek at 165 gpm.[20] Application 76572 proposes to use the waters of Steptoe Creek for stock-watering purposes. The State Engineer finds the construction of a dam on Steptoe Creek would impair the annual spring freshet, which must be allowed to pass to the senior downstream water right users. The State Engineer finds that Steptoe Creek is fully appropriated under existing water rights and no unappropriated water is available.

XX.

Application 76579 (Clear Spring) is located on land managed by the USFS. The spring is not developed. Clear Spring flows from a small grotto set in a large thicket and flows approximately 250 yards downstream directly into Clear Creek and hence into Steptoe Creek approximately ¼ mile further downstream. The flow of Clear Spring was estimated to be in excess of 150 gpm.[20] Based upon the findings of the field investigation and by inspection of the USGS topographic quad maps on file in the Office of the State Engineer, the stream flow from Clear Spring is tributary to Clear Creek, which is tributary to Steptoe Creek, which is subject to the Steptoe Decree. The State Engineer finds that Steptoe Creek is fully appropriated under existing water rights and no unappropriated water is available.

XXI.

Application 76573 (Aspen Spring) is located on land managed by the USFS. The spring flow infiltrates into the ground less than 50 feet downstream and was measured to be approximately 2.25 gpm. The spring is not developed. There was no evidence of a defined stream channel to Steptoe Creek.[20] A search of the records of the Office of the State Engineer finds no other surface-water rights on this source. The State Engineer finds that Aspen Spring is not tributary to Steptoe Creek and that there is water available for appropriation from Aspen Spring and that the approval of Application 76573 would not adversely impact existing water rights.

XXII.

Application 76578 (Spring 23) is located on land managed by the USFS. Claim of Vested Right V-03552 was filed on this source for stock-watering purposes and claims use of 0.015 cfs or approximately 6.7 gpm. The flow of Spring 23 at the troughs was measured to be approximately 12 gpm and in the streambed at 7.2 gpm for a total combined flow of 19.2 gpm.[20] The spring is developed by a spring box, short pipeline and troughs.[20] If Application 76578 is approved, Application 76578 would be issued subject to existing rights and would have a junior priority to Proof of Appropriation V-03552. Under the priority system, the senior water right must be fulfilled prior to the diversion of any water for Application 76578 and the measured flow rates indicate additional water is available for appropriation at the source; therefore, the approval of Application 76578 would not adversely affect existing water rights.

XXIII.

The applications investigated are for stock-water and recreational use on a mixture of private and public lands. The Applicant is the owner of the private lands associated with these applications. In addition, the Applicant holds the grazing leases on the public lands, both USFS and BLM, in the areas of these applications.[20] The State Engineer finds that for the stock-water applications under consideration, the Applicant is the authorized range user of the public lands.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[23]

II.

The State Engineer is prohibited by law from granting a permit under an application that requests to appropriate public waters where:[24]

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

[23] NRS chapter 533.
[24] NRS § 533.370(5).

D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that Spring 1 is tributary to Duck Creek and any additional appropriation of water from this source as proposed under Application 76555 will conflict with existing senior water rights.

IV.

The State Engineer concludes that Applications 76557, 76558, 76559, 76562, 76568, 76569, 76570, 76571, 76573, 76578, 76580, 76581 and 76583 request new appropriations of water from surface-water sources, not groundwater; henceforth, the protest issue that the applications are filed in a designated groundwater basin is without merit.

V.

The State Engineer concludes that Proof of Appropriation V-03553 has a senior priority date of January 1, 1874, and there is insufficient water at the source to satisfy any additional appropriations. Therefore, Application 76557 is subject to denial.

VI.

The State Engineer concludes that the source of water sought for appropriation under Application 76560 (Spring 6) and Application 76561 (Spring 7) is tributary to the fully appropriated Duck Creek stream system. Therefore, the applications will adversely affect senior downstream users. The State Engineer concludes that under these circumstances, Applications 76560 and 76561 cannot be considered for approval.

VII.

Application 76571 proposes to construct a dam on Steptoe Creek. Steptoe Creek was decreed on November 6, 1935, by the Seventh Judicial District Court of the State of Nevada, County of White Pine. The decree establishes priority of the first 20.844 cfs of water from Steptoe Creek. The sum of the diversion rates for active vested and permitted water rights on Steptoe Creek for consumptive uses comprising of irrigation and stock-watering purposes is 93.575 cfs.

As reported in the field investigation, the construction of a dam to impound water from Steptoe Creek would subtract a portion of the annual spring freshet needed to satisfy the senior water right holders. The State Engineer concludes that approval of Application

76571 would detrimentally affect decreed senior water right users and that Steptoe Creek is fully appropriated.

VIII.

The State Engineer concludes that Aspen Creek is tributary to Steptoe Creek, which is a fully appropriated decreed stream system and diverting water from Aspen Creek as proposed under Application 76572 would detrimentally affect senior downstream users.

IX.

The State Engineer concludes that Claim of Vested Right V-03552 has a senior priority date of January 1, 1874, which must be satisfied prior to any diversion of water that can occur under Application 76578, but additional water may be available over and above that necessary to satisfy the Claim of Vested Right.

X.

The State Engineer concludes that Clear Spring is tributary to Clear Creek, which is tributary to Steptoe Creek. Steptoe Creek is a decreed stream system that is fully appropriated and diverting additional water from Clear Spring as proposed under Application 76579 would detrimentally affect senior downstream users. In addition, the State Engineer has determined that there is no unappropriated water available at this source.

XI.

The State Engineer has determined that the surface-water sources described under Applications 76555, 76560, 76561, 76580, 76581, 76582 and 76583 are tributary to the Duck Creek stream system. The State Engineer concludes that the current decreed, vested and permitted amounts of approximately 47.97 cfs of water on the Duck Creek system exceed the base flow of Duck Creek. The State Engineer concludes that the Duck Creek stream system is fully appropriated and granting Applications 76555, 76560, 76561, 76580, 76581, 76582 and 76583 would detrimentally affect senior decreed and permitted water right holders. The State Engineer makes no ruling on the merits of the protest filed by the NDOW on Application 76555. The State Engineer makes no ruling on the merits of the protest filed by the BLM on Applications 76580 and 76583. The State Engineer makes no ruling on the merits of the protest filed by the USFS on Applications 76580, 76581 and 76583.

RULING

The protests to Applications 76558, 76559, 76562, 76568, 76569, 76570, 76573, and 76578 are overruled and the Applications are hereby granted subject to existing rights and payment of statutory fees.

Applications 76555, 76557, 76560, 76561, 76571, 76572, 76579, 76580, 76581, 76582 and 76583 are hereby denied on the grounds that approval of said applications would conflict with existing rights.

Respectfully submitted,

JASON KING, P.E.
State Engineer

Dated this 15th day of

September, 2010.