

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

IN THE MATTER OF APPLICATION 80206)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF STAR CREEK WITHIN THE)
BUENA VISTA VALLEY HYDROGRAPHIC)
BASIN (129), PERSHING COUNTY, NEVADA.)

RULING

#6150

GENERAL

I.

Phillip Geertson filed Application 80206 on October 14, 2010, to appropriate 0.55 cubic feet per second (cfs), of water from Star Creek. The proposed manner of use is for mining and milling (placer mining) purposes within the NE $\frac{1}{4}$ of Section 24, T.31N., R.34E., M.D.B.&M. in addition to the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 19, T.31N., R.35E., M.D.B.&M. The point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 24.¹

II.

Application 80206 was timely protested by the Pruitt Revocable Living Trust, on grounds as summarized below:¹

1. The point of diversion described under Application 80206 appears to have the same point of diversion as Proof V-01177, which is owned by the Pruitt Living Trust.
2. The Pruitt Living Trust has no agreement with the Applicant to use the diversion structure or any of the ditches and pipelines that cross the proposed place of use.
3. The Applicant does not have a plan of operation filed with the Bureau of Land Management (BLM) that would protect the Pruitt Living Trust's existing irrigation ditches and pipelines.
4. The approval of Application 80206 would conflict with Proof V-01177, which is held by the Protestant.

¹ File No. 80206, official records in the Office of the State Engineer.

III.

The BLM also protested Application 80206, but withdrew its protest on February 2, 2011.¹

FINDINGS OF FACT

I.

The Protestant, Pruitt Living Trust, claims that the approval of Application 80206 would create an adverse impact on its existing Star Creek water rights. Currently, the Protestant holds two water rights on this source, Proof V-01177 and Permit 2925, Certificate 575. Both V-01177 and Permit 2925, Certificate 575, were included within the Star Creek Decree, which is the civil decree that emerged from the case Gallio v. Ryan.²

Proof V-01177 and Permit 2925, Certificate 575, represent the only irrigation water rights on Star Creek, and were issued for seasonal duties. The period of use for Permit 2925, Certificate 575, extends from April 1st to August 1st, during which time water can be diverted from Star Creek for use on the Santa Clara Ranch. Irrigation under Proof V-01177 begins on March 15th and concludes on October 15th. A table depicting the committed resource of all water rights on Star Creek is presented below:

PERMIT/ PROOF	MONTHS												COMMITTED CFS	
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC		
V-01177			15 TH							15 TH				1.12
2925				1 ST				1 ST						0.49
9009			15 TH									15 TH		1.00
9061				15 TH								15 TH		1.00
80206	1 ST												1 ST	

The State Engineer finds that from October 16th to March 14th of the following year, the Protestant cannot divert water from Star Creek under its existing water rights.

II.

After October 15th, the committed resource of Star Creek is reduced to a pair of perfected water rights, Permit 9009, Certificate 1831 and Permit 9061, Certificate 1932, that were issued in

² G. Gallio v. Edith Ryan, Sixth Judicial District Court of the State of Nevada, In and For the County of Pershing, May 6, 1927 herein after referred to as Decree.

1929 to support the Central Pacific's rail yard in Imlay.^{3,4} Like the Protestant's irrigation rights on Star Creek, the railroad permits are seasonal, but if they are combined they form a year round use, that is limited to a diversion rate of 1.0 cfs. There is no doubt that at one time, this amount of water was diverted and conveyed to Imlay to provide water for steam locomotive, fire protection and municipal use. Based upon the fact that the last commercial steam locomotive departed Imlay many years ago, and the town's municipal water supply is now obtained from nearby wells, the State Engineer finds that the need to appropriate water under Permit 9009 and 9061 ceased to exist many years ago.

III.

The answer to what affect the approval of Application 80206 will have on the Protestant's existing water rights depends to a great deal upon its period of use. If the Applicant's water use is restricted to the off season, there can be no conflict, since during this time there is no competition between the Applicant and Protestant for the water. The only water right permits that are classified as active during the off season are the railroad permits. Certainly, there can be no conflict with these permits since they no longer divert water for their intended beneficial use. The State Engineer finds that the approval of Permit 80206 for a period from October 16th to March 14th of the following year would not conflict with existing water rights on Star Creek.

IV.

It has been determined that an off season use would not conflict with existing water rights; however, the question remains as to how much water, if any, is generated by Star Creek during this time. The answer to this can be found in two sets of stream flow measurements that were taken in 1926 and 2011. The earlier set of measurements was produced by a hydrologic study that was ordered by the Sixth Judicial Court, in connection with the civil case Gallio v. Ryan. During the 1926 irrigation season, regular measurements were taken on Star Creek and it's ditches. It was determined from this data that the average flow of stream was 3.5 cfs, albeit it was also recognized that 1926 was an exceptionally dry year.⁵

³ File No. 9009, official records in the Office of the State Engineer.

⁴ File No. 9061, official records in the Office of the State Engineer.

⁵ Star Creek Hydrograph, contained within Star Creek Adjudication file, official records in the Office of the State Engineer.

The filing of Application 80206 and its subsequent protest prompted the Office of the State Engineer to initiate a second set of measurements that began in April 2011 and is ongoing.⁶ Due to an unusually high freshet generated by the Star Creek drainage, the 2011 stream flow measurements are elevated with the flow of the stream projected to reach beyond October 15th. This leaves the State Engineer with two sets of records that are at opposite ends of the spectrum. One representing a dearth of water the other a surplus. Since there is no record of stream flow associated with an average water year, there can be no guarantee that water will be present during the off season every year. There is however a reasonable assumption that there may be extended time periods, such as those measured during 2011, when water is available for use by the Applicant. The State Engineer finds that the Applicant's request for additional water from Star Creek can be considered from October 16th, to March 14th, of the following year.

V.

It is the Protestant's claim that the Applicant has not obtained the necessary land use permits from the federal government. The State Engineer finds that the approval of any permit under Application 80206 will not release the Applicant from any additional permits that must be obtained from State, Federal or local authorities.

VI.

The Star Creek Ranch has a substantial diversion structure on Star Creek from which water is piped for use on the Protestant's fields. The Protestant has advised the Office of the State Engineer that the Applicant is not entitled to use this diversion structure, in addition to the pipeline and ditches that it serves. The State Engineer finds that the approval of Application 80206 will not extend the permittee the right to ingress or egress on public, private or corporate lands.

CONCLUSIONS

I.

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

⁶ 2011 Star Canyon stream flow measurements, preliminary data, official records in the Office of the State Engineer.

⁷ NRS Chapter 533.

II.

The State Engineer is prohibited by law from granting 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 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.

Both of the Protestant's existing water rights were issued for seasonal flows, the longest of which expires on October 15th. After this date, no diversions of water occur from Star Creek. Accordingly, the State Engineer concludes that the approval of Application 80206 for off season use would not conflict with existing water rights.

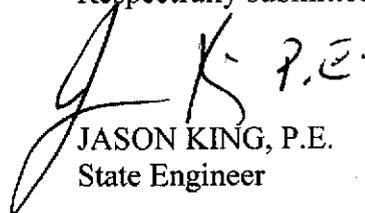
IV.

The 2011 stream flow measurements affirm that sufficient water can be generated by Star Creek to support the Applicant's proposed manner of use after October 15th.

RULING

The protest to Application 80206 is overruled and Application 80206 is approved subject to existing water rights and the payment of the statutory filing fees.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 19th day of
September, 2011.

⁸ NRS § 533.370(5).