

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

IN THE MATTER OF APPLICATION 79521)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF WILLARD CREEK WITHIN THE)
SPRING VALLEY HYDROGRAPHIC BASIN)
(184), WHITE PINE COUNTY, NEVADA.)

RULING

#6217

GENERAL

I.

Application 79521 was filed on February 11, 2010, by the Southern Nevada Water Authority (SNWA), to appropriate 2.7 cubic feet per second (cfs) of water from Willard Creek. The proposed manner of use is described as being for irrigation and domestic purposes for the irrigation of 160 acres. The proposed use will be from January 1 to December 31 of each year. The proposed place of use is described as being located within the NW¼ of Section 22, T.13N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 15, T.13N., R.67E., M.D.B.&M.¹

II.

Application 79521 was timely protested by Great Basin Water Network, The Confederated Tribes of the Goshute Reservation, Annemarie Heckethorn for the Heckethorne Family Trust, Henry C. Vogler IV, White Pine County, Baker Ranches, Inc., Center for Biological Diversity, United States Department of the Interior, Bureau of Land Management, Schell Field Office, Ely Shoshone Tribe, U.S. Fish and Wildlife Service (USFWS) and The Long Now Foundation on numerous grounds, including many grounds related to the SNWA importation project. The protest grounds include but are not limited to the following briefly summarized issues:

1. Does not meet interbasin groundwater transfer criteria,
2. Conflicts with existing rights associated with:
 - a. USFWS Fish Springs National Wildlife Refuge,
 - b. Tribal reserved water rights,
3. Threatens to prove detrimental to the public interest:
 - a. Air quality, economic impacts, environmental impacts, impacts to cultural resources, visual quality, plant and animal species, impacts to adjacent basins, tribal interests, and
4. No unappropriated water available.

¹ File No. 79521, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Nevada Revised Statutes § 533.365(4) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that sufficient evidence is available in the records of the Office of the State Engineer to evaluate the merits of Application 79521 and its associated protests and a hearing is not necessary.

II.

The State Engineer finds most of the protests assert grounds related to the SNWA's groundwater importation project. The State Engineer finds that NRS § 533.370(3) is a statute that addresses the interbasin transfer of groundwater and Application 79521 is an application for surface water; therefore, most of the protest grounds asserted are not relevant to the consideration of this Application.

III.

Before an application to appropriate water from a surface water source can be considered for approval, it must be determined that there is sufficient unappropriated water available at the source and that the proposed appropriation will not conflict with existing water rights. One of the initial steps in making this determination is to identify all active water rights on the stream in question. The Office of the State Engineer has created and maintains a water rights database to allow research of existing water rights in a relatively easy and highly accurate manner. A recent review of this database identified a group of existing water rights on Willard Creek, which are illustrated below:

App	Status	CFS	Use	Period of use	Acres	Duty AF	Owner of Record (NDWR)
983*	CER	1.0	MM	Jan 1 - Dec 31	N/A	723.97**	Pilot Knob Mining & Milling
1052	CER	0.2	IRR	May 1 - Sept 1	20.0	80.0	John Michael Baal, Jr.
8804	CER	0.032	STK	Jan 1 - Dec 31	N/A	22,403	John Michael Baal, Jr.
17017	CER	0.318	IRR	May 1 - Sept 30	31.82	97.0	John Michael Baal, Jr.
22545	CER	2.0	IRR	Jan 1 - Dec 31	160.0	640.0	SNWA
50772	CER	4.0	IRR	Jan 1 - Dec 31	188.19	752.76	SNWA
Totals		7.55			400.1	1,592.16	

*Water is used to furnish power and domestic use.²

**This Certificate was issued to furnish power non-consumptive use and for domestic use for a diversion rate only and actual beneficial use has not been quantified to date.

² File No. 983, Certificate 171, official records in the Office of the State Engineer.

The State Engineer finds that the record of stream flow measurements of Willard Creek shows that during the spring freshet, stream flow increases in spring and then steadily decreases until fall, when the flow falls well below the committed resource diversion rate of 7.55 cfs. The records of the Office of the State Engineer indicate that the stream flow of Willard Creek measured between 1991 and 1997 annually averaged 0.6 cfs and 0.5 cfs between 2006 and 2010.³ In the years when measurements were taken, the stream flow has not exceeded the committed resource diversion. Considering this fact, a reasonable amount of water would only be available in a given year to satisfy some of the existing rights on Willard Creek.

Based on the record of stream flow data and the existing water rights on the source, the State Engineer finds Willard Creek to be fully appropriated and that no additional appropriation of water can be approved from this source.

IV.

An inventory of underground as well as surface water of the Spring Valley Hydrographic Basin was conducted by the Nevada Division of Water Resources and *The Spring Valley Hydrographic Basin 10-184 NRS § 533.364 Inventory* (Inventory) was published in August 2011. One requirement of the Inventory is to provide a snap-shot in time of the water availability within the groundwater basin, including surface water sources. This study included Willard Creek and the Inventory lists 354.56 afa (approximately 0.49 cfs) as the estimated average annual stream-flow of Willard Creek, which is significantly less than the committed diversion rate of 7.55 cfs and less than the committed duty of 1,592 acre-feet per season on the source and provides further evidence that there is no additional water available for appropriation.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

³ Stream Flow Measurements of Willard Creek, official records in the Office of the State Engineer.

⁴ NRS Chapter 533.

⁵ NRS § 533.370(2).

- C. the proposed use or change conflicts with protectable 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.

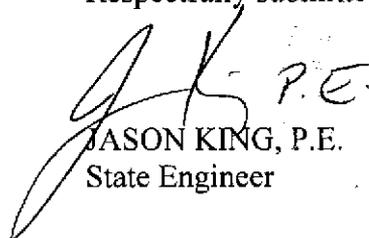
III.

The State Engineer concludes from the stream flow measurements of Willard Creek, that the committed diversion rate of 7.55 cfs has not been exceeded during the period of record. The State Engineer concludes that the waters of Willard Creek shall be considered fully appropriated and there is no unappropriated water available at the proposed source. The State Engineer concludes that the approval of Application 79521 would conflict with existing rights and would threaten to prove detrimental to the public interest.

RULING

Application 79521 is hereby denied on the grounds that there is no unappropriated water at the proposed source and its approval would conflict with existing rights and threaten to prove detrimental to the public interest. No ruling is made on the merits of the remaining protest issues.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 20th day of
February, 2013.