

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

IN THE MATTER OF APPLICATION 81064)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF GOSHUTE CREEK WITHIN THE)
SPRING VALLEY HYDROGRAPHIC BASIN)
(184), WHITE PINE COUNTY, NEVADA.)

RULING
#6221

GENERAL

I.

Application 81064 was filed on August 12, 2011, by the Southern Nevada Water Authority, (SNWA) to appropriate 4.952 cubic feet per second (cfs) not to exceed 3,585 acre-feet annually (afa), of water from Goshute Creek. The proposed manner of use is described as being for irrigation of 896.25 acres of land from January 1 to December 31 of each year. The proposed place of use is described as being located within the W $\frac{1}{2}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 5, all of Section 6, W $\frac{1}{2}$ and the W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 7, T.17N., R.67E., M.D.B.&M., S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$, of Section 31, and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 32, T.18N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32 T.17N., R.67E., M.D.B.&M.¹

II.

Application 81064 was timely protested by Moriah Ranches, Inc., on the grounds that:¹

1. The applicant has not demonstrated that the rate of flow for Goshute Creek is sufficient to support the use under this application. Any water measurements that may have been completed this year should be disallowed due to the excessive snow pack and runoff this year. Any measurement completed this year would not be an accurate representation of the average long term creek flows.
2. The following applications should be acted upon before this application: Application Nos. 71565, 75395, and 75396.
3. The application will be detrimental to existing rights under Certificate 5202.
2. [sic] If granted, the terms of the permit should be issued as a supplemental tailwater permit to the existing underground rights associated with the place of use and the applicant only to receive excess waters.

¹ File No. 81064, official records in the Office of the State Engineer.

Application 81064 was timely protested by the United States Department of the Interior, Bureau of Land Management (BLM) on grounds that:¹

1. Applicant does not possess a right-of-way to access the POD which is situated on public land managed by BLM;
2. Approximately 25 acres of lentic riparian wildlife habitat are supported by Goshute Creek that would be lost by the removal of water at the POD for use approximately 4 miles outside its natural course. Due to loss of critical wildlife habitat and other resource values BLM would not issue a right-of-way to the applicant to access public land; and
3. The Place of Use as described in the application 81064 appears to already possess enough water via a previously proposed irrigation system associated with two pending applications to cultivate alfalfa or other crops given the accepted rate of 4 AFA per acre for Spring Valley. Two pending applications (76330 and 79435) would provide about 8 AFA for use at the identical listed POU. Application 81064 would add another 1.55 AFA per acre to the same plot of land for a potential total of 9.55 AFA per acre of irrigated land.

Application 81064 was timely protested by the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints on grounds that:¹

Corporation of the Presiding Bishop owns and operates the Cleveland and Rogers Ranches and associated grazing permits as part of a large livestock operation in north Spring Valley. Both the fee ground and allotments are critical to the overall operation of this livestock program.

Application #81064 names Goshute Creek as the source. It appears that, rather than a stream from the mountains, this reference is to a tailwater slough for waters running off or through the Cleveland Ranch on which the protestant has rights from Cleve Creek, Indian Creek, Freehill Creek, Stevens Creek, and numerous other springs and surface water sources. Tailwater from these sources is already appropriated and claimed by the Eldridge family. There are significant seasonal and annual variations in tailwater flows reaching the existing Eldridge place of use. The concept of conveying, what is in most years a variable resource that is fully utilized by the Eldridges, from the Applicant's proposed point of diversion for 4 to 6 miles (including the crossing of the playa) to water "alfalfa and other crops," is questionable at best. Further, if SNWA has applied for these rights for mitigation purposes for its proposed wells in Spring Valley, such is not a recognized beneficial use.

There is no unappropriated water in the source. Granting approval for any or all of this application would adversely impact existing rights. Further, the applicant provides no explanation, economics, or analysis to support the feasibility or practicality of this appropriation or its intended use.

Application 81064 was timely protested by George Eldridge and Son, Inc. on the grounds that:¹

George Eldridge and Son, Inc. (GES), in a written agreement with SNWA's predecessor, Reed B. Robison, a copy of which is on file with the State Engineer, concurred that that the sloughs supplying water to Foster Meadow shall be construed among the parties as Eldridge waters. That agreement certainly is binding on Reed B. Robison's successors; granting a permit under this application would be contrary to that agreement and contrary to the public interest.

GES holds Certificate 134 (1913) and Application 26740 (RFP) (1972), the POD's of which are on sloughs fed by the waters of Goshute Creek, for irrigation purposes. Permitting 81064 would impair GES's prior right Certificate 134 and any rights subsequently granted pursuant to its prior Application 26740.

Application 81064 was timely protested by Ely Shoshone Tribe, Confederated Tribes of the Goshute Reservation and Duckwater Shoshone Tribe on grounds as summarized below:

1. The proposed use of the water is uncertain.
2. There is insufficient amount of water in the proposed source of supply.
3. The application and proposed use would conflict with existing water rights and impermissibly diminish the sources of and protectable interests in domestic wells.
4. The appropriation and proposed use would be detrimental to the public interest on environmental grounds, environmentally unsound and unsustainable.
5. The appropriation and proposed use would have unduly negative impacts on cultural, historic, and religious resources which would harm the public interest.
6. The appropriation and proposed use would violate federal and state laws that protect cultural, religious, and historic resources.
7. The appropriation and proposed use would violate the federal government's trust responsibility to the tribe.
8. The appropriation and proposed use would unduly injure the Tribe's sovereignty and ability to regulate its territory.

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 information is available in the records of the Office of the State

Engineer to evaluate the merits of Application 81064 and its associated protests and a hearing is not necessary.

II.

Before an application to appropriate water from a surface 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 water source in question. The Office of the State Engineer has created and maintains a water rights database to allow research of existing water rights. A recent review of this database identified a single existing water right on Goshute Creek, as Permit 1159, Certificate 134, with a diversion rate of 2.09 cfs and a duty of 758.44 afa to irrigate 209.1 acres.

The records of the Office of the State Engineer identified only one recorded historic measurement of Goshute Creek of 6.0 cfs, which was submitted with the Proof of Application of Water to Beneficial Use dated July 27, 1911. On July 21, 2011, Field Investigation No. 1149 was conducted by the Office of the State Engineer and found standing water in the channel and an observed flow of approximately 20 gallons per minute or 0.04 cfs.

The field investigation found that the observed flow of water in Goshute Creek primarily consisted of "tail water" from irrigation occurring on the Cleveland Ranch. By its nature this tail water is just that, and may not be available for all years and/or all seasons.

The State Engineer finds that the evidence gathered during Field Investigation No. 1149 found the observed flow of Goshute Creek to be approximately 0.04 cfs and this flow rate is insufficient to satisfy Permit 1159, Certificate 134 throughout the irrigation season and indicates that there is no unappropriated water at the source.²

III.

An inventory of underground and surface waters of the Spring Valley Basin Hydrographic Basin was conducted in 2011 and *The Spring Valley Hydrographic Basin 10-184 NRS § 533.364 Inventory*³ (Inventory) was published in August 2011. One goal of the inventory was to provide a snap-shot in time of the water availability within the groundwater basin,

² Report of Field Investigation No. 1149, official records in the Office of the State Engineer.

³ Spring Valley Hydrographic Basin Inventory, 2011, p. A-95, official records in the Office of the State Engineer.

including its surface water sources. The Inventory included Goshute Creek and lists 4,343.82 afa (approximately 6.0 cfs) as the Estimated Average Annual Discharge stream-flow of Goshute Creek. This estimated average annual discharge was calculated from the single stream-flow record submitted with the Proof of Application of Water to Beneficial Use dated July 27, 1911, and does not appear to be based on any other stream measurements or field observations. An observed flow from Field Investigation No. 1149 of July 21, 2011, estimated the flow of water in Goshute Creek at about 0.04 cfs and that the water is irrigation drain and/or wastewater, in which the primary user is under no obligation to deliver. The State Engineer finds the waters of Goshute Creek to be drain and/or wastewater from the Cleveland Ranch.

Based on the observed flow from Field Investigation No. 1149 and the nature of the water being irrigation drain and/or wastewater the State Engineer finds that there is no unappropriated water available from Goshute Creek and to allow an additional water right on this source would conflict with the existing water rights under Permit 1159, Certificate 134. In addition, the State Engineer finds that it would not be appropriate to use the information provided on the July 27, 1911, Proof of Application of Water to Beneficial Use form as cited in the Inventory as a basis for issuing a new appropriation on this source when the more recent data from the 2011 field investigation is available.

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 a permit under a change application that requests to appropriate public waters where:⁵

- 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 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.

⁴ NRS Chapter 533.

⁵ NRS § 533.370(2).

III.

The stream flow measurement from the Proof of Application of Water to Beneficial Use made in 1911 was not verifiable by the observed flow from Field Investigation No. 1149. Goshute Creek's current committed resource represented by Permit 1159, Certificate 134, and the nature of the water being primarily irrigation drain and/or wastewater, combined with the information provided by Field Investigation No. 1149 leads the State Engineer to conclude that Goshute Creek is fully appropriated and no additional water is available for appropriation.

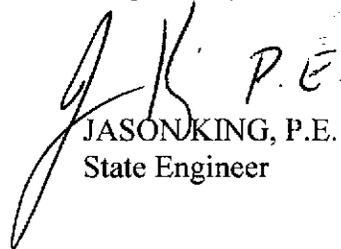
IV.

Based on the findings, the State Engineer concludes that Application 81064 would conflict with existing rights and threaten to prove detrimental to the public interest.

RULING

The protests to Application 81064 are upheld in part and Application 81064 is hereby denied on the grounds that there is no unappropriated water at the 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 28th day of
March 2013
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