

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

IN THE MATTER OF APPLICATION 79509)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF MCCOY CREEK WITHIN THE)
SPRING VALLEY HYDROGRAPHIC BASIN)
(184), WHITE PINE COUNTY, NEVADA.)

RULING
#6222

GENERAL

I.

Application 79509 was filed on February 11, 2010, by the Southern Nevada Water Authority (SNWA), to appropriate 10 cubic feet per second (cfs) of water from McCoy Creek. The proposed manner of use is described as being for irrigation of not more than 800 acres and domestic purposes from January 1 to December 31 of each year. The proposed place of use is described as being located within portions of the W½ of Section 5, NE¼, E½ SE¼ of Section 6, S½ SW¼, NW¼ SE¼, SW¼ SE¼ of Section 7, T.17N., R.67E., SW¼, SE¼ of Section 31, and the S½ SW¼ of Section 32 T.18N., R.67E., M.D.B.&M. The point of diversion is described as being located within the SW¼ SW¼ of Section 35 T.18N., R.66E., M.D.B.&M.¹

II.

Application 79509 was timely protested by Great Basin Water Network, The Confederated Tribes of the Goshute Reservation, White Pine County, Henry C. Vogler, IV, Center for Biological Diversity, United States Department of the Interior, Bureau of Land Management, Schell Field Office (BLM), Keith E. Carson, The Ely Shoshone Tribe, The Long Now Foundation and United States Fish and Wildlife Service on grounds, including Nevada's Interbasin transfer statute² NRS § 533.370(3) formerly NRS § 533.370(6) and as summarized below:¹

1. There is not a sufficient amount of water in the proposed source of supply.
2. The Application and proposed use would conflict with existing water rights and impermissibly diminish the sources of and protectable interests in domestic wells.

¹ File No. 79509, official records in the Office of the State Engineer.

² NRS § 533.370(3).

3. The Application and proposed export of water would be detrimental to the public on environmental grounds and be environmentally unsound.
4. The appropriation and proposed export of water would have an adverse affect on wildlife.
5. The appropriation and export of water would be detrimental to the public interest on economic grounds and limit future growth in the basin.
6. The need for interbasin transfer of water is not justified and is harmful to the basins of origin as well as the public interest.
7. The Application and proposed use would have detrimental impacts on cultural, historic, religious, traditional, aboriginal and ancestral lands and sites and harm the public interest.
8. The Application and proposed use would violate federal law enacted to preserve cultural, historic, religious, traditional, aboriginal and ancestral lands and sites.
9. The Applicant has not executed a proper conservation plan to protect the affected basins.
10. The Application and proposed use is not an appropriate long-term use of the State of Nevada's water.
11. The Application and proposed use would violate the Tribe's sovereign ability to regulate its territory.
12. The Application and proposed use would thwart the federal trust responsibility toward the tribe and tribal resources.
13. The appropriation and export of water proposed in this Application would violate the Tribe's reserved water rights and thwart the intent of the tribal rights doctrine.
14. Granting these applications will cause injury to Service-owned senior water rights for water on the Fish springs NWR and the Endangered Species Act.

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 79509 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 79509 is an application from a surface water source and therefore, most of the protest grounds are not relevant to Application 79509.

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 accurate manner. A recent review of this database identified a group of existing water rights on McCoy Creek, which include Claim of Vested Right V-00791 (McCoy and Garden Creeks), Claim of Vested Right V-01215 (McCoy Creek) and Permit 10710, Certificate 4011, (McCoy Creek) and are presented below.

App	Status	CFS	Use	Period of use	Acres	Duty AF	Units	Owner of Record
V-00791	Vst	10.6*	Irr	2/1-4/30	1,920	1,873*	afs	SNWA
V-01215	Vst	7.8*	Irr	2/1-11/30	590	2,360*	afs	SNWA
10710	Cer	3.1	Irr	1/1-12/31	310	1,240	afs	SNWA
Totals		21.5				4,724	afs	

*calculated at 4 af/ac from 1,920 acres for 89 days and 590 acres for 333 days.

The State Engineer finds that the record of stream flow measurements of McCoy Creek shows that during the spring freshet, stream flow increases in spring, peaking primarily in May and June and then steadily decreases until fall, when the stream flow falls well below the maximum committed diversion rate, which is estimated to be 21.5 cfs. Because Claim of Vested Right V-00791 lists Garden Creek as a source, and if that source is discounted, the committed resource is 10.9 cfs. The State Engineer finds the committed resource is estimated between 10.9 cfs and 21.5 cfs. The diversion rates of Claims of Vested Right V-00791 and V-01215 are estimated based on information contained in the Claims and supporting maps. The final diversion must be determined by a formal adjudication. Until an adjudication determines the diversion rates and duties of Claims of Vested Right V-00791 and V-01215, the duty can only be estimated and the

estimated amounts have senior priority on the sources. The records of the Office of the State Engineer indicate that the stream flow of McCoy Creek, measured above the pipeline that conveys the waters of McCoy Creek to the place of use annually averages 5.5 cfs and 7.0 cfs during the irrigation season (April through September), is significantly less than the minimum estimated committed diversion resource of 10.9 cfs, solely of McCoy Creek. From daily measurements taken between October 2007 and September 2012, the stream flow of McCoy Creek has exceeded the minimum committed resource diversion of 10.9 cfs 8.7% of the time and maximum committed resource diversion of 21.5 cfs has been exceeded 1.2% of the time. The State Engineer finds that the current committed diversion is exceeded only during times of heavy runoff and gives evidence that a reasonably reliable amount of additional water for appropriation is not practical and could not be reasonably captured and/or placed to beneficial use. Claim of Vested Right V-00791 is included here; however, due to the lack of specificity of the submitted Proof document as to the diversion rates or contribution of stream flow from each stream, it must be presumed from a 0% to a 100% contribution. However, Claim of Vested Right V-00791 would contribute an additional but undeterminable diversion rate from McCoy Creek. The submitted Claim of Vested Right V-00791 document states only that the waters of McCoy Creek and Garden Creek are diverted through the Cleveland ditches. Considering these facts, the State Engineer finds that waters of McCoy Creek would only reasonably be available during a significant flood event where the capture and ability to put the water to beneficial use would be unreasonable.

IV.

An inventory of underground as well as surface waters 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 basin, including surface water sources. This study included McCoy Creek and the Inventory lists 4,833 afa and 6.68 cfs as the Estimated Average Annual Streamflow of McCoy Creek, which is significantly less than the calculated minimum committed diversion rate of 10.9 cfs, and provides evidence that there is no additional diversion available for appropriation. The Inventory considered the

1,600 irrigated acres from the Claim of Vested Right V-01215. The acreage considered here is 590 acres, which is from the cultural map submitted in support of Claim of Vested Right V01215 and filed on February 3, 1913.³

V.

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

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.

III.

The State Engineer concludes that from the record of stream flow measurements of McCoy Creek, that the calculated minimum committed diversion rate of 10.9 cfs has been exceeded 8.7% of the time during and the maximum committed diversion rate has been exceeded 1.2% of the time. The period of record does not include an undetermined diversion from Claim of Vested Right V-00791. The State Engineer concludes that the waters of McCoy Creek shall be considered fully appropriated and there is no unappropriated water at the proposed source. The State Engineer concludes that the

³ Spring Valley Hydrographic Basin Inventory, 2011, p. A97, official records in the Office of the State Engineer.

⁴ NRS Chapter 533.

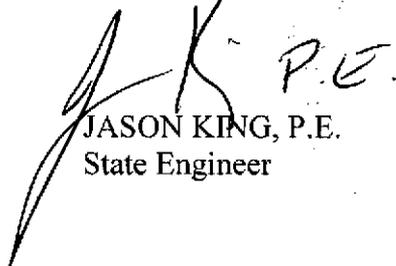
⁵ NRS § 533.370(2).

approval of Application 79509 would conflict with existing rights and would threaten to prove detrimental to the public interest.

RULING

Application 79509 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 28th day of
March, 2013.