

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

IN THE MATTER OF APPLICATIONS 82202)
AND 82245 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF MURRY/MURRAY)
CREEK WITHIN THE STEPTOE VALLEY)
HYDROGRAPHIC BASIN (179), WHITE)
PINE COUNTY, NEVADA.)

RULING

#6231

GENERAL

I.

Application 82202 was filed on October 17, 2012, by Keith E. Carson Living Trust dated March 23, 1995, to appropriate 0.5 cubic feet per second (cfs) of water from Murry Creek (a.k.a. Murray Creek) for the irrigation of 25.78 acres and domestic purposes from January 1st to December 31st of each year. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T.16N., R.63E., M.D.B.&M. The proposed place of use is described as being 11.46 acres of land within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and 12.82 acres of land within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, and 1.50 acres of land within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, all within T.16N., R.63E., M.D.B.&M.¹

II.

Application 82245 was filed on October 30, 2012, by Keith E. Carson Living Trust dated March 23, 1995, to appropriate 0.0005 cfs of water from Murray Creek for stockwater purposes for 12 head of cattle, 2 horses and 2 burros from January 1st to December 31st of each year. The proposed point of diversion and place of use is the same as described under Application 82202.²

III.

Applications 82202 and 82245 were timely protested by the Ely Municipal Water Department on the following grounds:^{1,2}

1. Murry Creek is currently dry and the only water regularly flowing in Murry Creek is waters that are being pumped under Ely Municipal Water Department Permit Nos. 79837, 79839, and 79841. The Ely Municipal Water Department does not want to be obligated to pump water into Murry Creek to provide water for any application that may be granted.
2. The Ely Municipal Water Department is the downstream user of Murry Creek surface waters under Certificates 7946 and 1085 and would be detrimentally affected by the issuance of this application.

¹ File No. 82202, official records in the Office of the State Engineer.

² File No. 82245, official records in the Office of the State Engineer.

3. The applicant has not demonstrated that the rate of flow of Murry Creek is sufficient to support the use under this application without the pumping of the aforementioned water rights.

FINDINGS OF FACT

I.

Nevada Revised Statute § 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 Applications 82202 and 82245 and their associated protests and a hearing is not necessary.

II.

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. A recent review of this database identified a group of existing water rights on Murray Creek, which are identified below:³

| App | Status | CFS ⁴ | Use | Period of use | Acres | Duty AF ⁵ | Owner of Record (NDWR) |
|-------|--------|------------------|-----|---------------|-------|----------------------|--------------------------------|
| 338 | Cer | 2.298 | Irr | 4/1-10/1 | 229.8 | 689.4 | Ely Municipal Water Department |
| 7650 | Cer | 2.0 | Irr | 10/1-3/31 | 355.3 | 717.0 | Ely Municipal Water Department |
| 20811 | Cer | 5.0 | Irr | 4/1-10/31 | 368 | 1,472 | Ely Municipal Water Department |

³ Nevada Division of Water Resources' Water Rights Database, July 10, 2013; official records in the Office of the State Engineer.

⁴ The terms of Permit 51397, Certificate 13860 limit the total combined rate of diversion under Permit 45166, Certificate 13437; Permit 45624, Certificate 13442 and Permit 51397, Certificate 13860 to 13.0 c.f.s.; thus, the total cfs for this column is not a direct sum of the values in the column. See File No. 51397, official records in the Office of the State Engineer.

⁵ The terms of Permit 79837 limit the total combined duty of surface water under Permit 45166, Certificate 13437; Permit 45624, Certificate 13442; Permit 51397, Certificate 13860; and Permits 54874 and 54875 to not exceed 6,924 afa; thus, the total duty for this column is not a direct sum of the values in the column. See File No. 79837, official records in the Office of the State Engineer.

| App | Status | CFS ⁴ | Use | Period of use | Acres | Duty AF ⁵ | Owner of Record (NDWR) |
|--------|--------|------------------|-----|---------------|-------|----------------------|--------------------------------|
| 45166 | Cer | 11.0 | Mun | 1/1-12/31 | | 2,183.03 | Ely Municipal Water Department |
| 45624 | Cer | 2.0 | Mun | 1/1-12/31 | | 397.024 | Ely Municipal Water Department |
| 51397 | Cer | 0.45 | QM | 1/1-12/31 | | 322.603 | Ely Municipal Water Department |
| 54874 | Per | 4.0 | Mun | 1/1-12/31 | | 2,895.875 | Ely Municipal Water Department |
| 54875 | Per | 2.0 | Mun | 1/1-12/31 | | 1,447.94 | Ely Municipal Water Department |
| Totals | | 28.30 | | | 952.7 | 9,802.40 | |

A review of the records of the Office of the State Engineer indicate that the stream flow of Murray Creek measured between July 2011 and December 2012 show a typical flow of between 4 cfs and 12 cfs with an average of 8 cfs.⁶ In the 1½ years when measurements were taken, the stream flow has not exceeded the committed resource diversion. Considering this fact, there would not be water available to satisfy Applications 82022 and 82245.

The State Engineer finds that Murray Creek is a primary source of water for the City of Ely and that dewatering mining activity has essentially stopped the natural flow of Murray Creek. The City of Ely has had two wells constructed in Murray Canyon that have the ability to pump a sufficient amount of water to mitigate the loss of the naturally flowing water of Murray Creek to provide the City of Ely with a reliable water source.^{7, 8}

Based on the record of recent stream flow data and the existing water rights on the source, the State Engineer finds Murray Creek to be fully appropriated and that no additional appropriation of water can be considered from this source and that an additional appropriation would be detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁹

⁶ Nevada Division of Water Resources' Spring and Stream Flow Database, July 10, 2013, available on-line at <http://water.nv.gov/data/streamflow>, official records in the Office of the State Engineer.

⁷ File No. 79837, official records in the Office of the State Engineer.

⁸ File No. 79841, official records in the Office of the State Engineer.

⁹ NRS Chapter 533.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁰

- 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 stream flow measurements of Murray Creek, the committed diversion rate of 28.30 cfs has not been exceeded during the period of record. The State Engineer concludes that the waters of Murray Creek shall be considered fully appropriated and there is no unappropriated water at the proposed source. The State Engineer concludes that the approval of Applications 82202 and 82245 would conflict with existing rights and would threaten to prove detrimental to the public interest.

RULING

The protests to Applications 82202 and 82245 are upheld and Applications 82202 and 82245 are hereby denied on the grounds that there is no unappropriated water at the proposed source and approval would conflict with existing rights and threaten to prove detrimental to the public interest.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 6th day of
August, 2013.

¹⁰ NRS § 533.370(2).