

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

IN THE MATTER OF APPLICATIONS 65669, 76158, AND 79669)
FILED TO APPROPRIATE THE PUBLIC WATERS OF ROCK)
CREEK AND TRIBUTARIES; APPLICATIONS 65941 AND 76154)
FILED TO APPROPRIATE THE PUBLIC WATERS OF RED)
MOUNTAIN CREEK AND TRIBUTARIES; APPLICATIONS)
66306 AND 76159 FILED TO APPROPRIATE THE PUBLIC)
WATERS OF GRANITE CREEK AND TRIBUTARIES;)
APPLICATION 76152 FILED TO APPROPRIATE THE PUBLIC)
WATERS OF LEADVILLE CREEK AND TRIBUTARIES;)
APPLICATION 76153 FILED TO APPROPRIATE THE PUBLIC)
WATERS OF NEGRO CREEK; APPLICATION 76155 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF COTTONWOOD)
CREEK AND TRIBUTARIES; APPLICATION 76156 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF LITTLE)
COTTONWOOD CREEK AND TRIBUTARIES; AND 76157 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF BARKER CREEK)
AND TRIBUTARIES ALL WITHIN THE HUALAPAI FLAT)
HYDROGRAPHIC BASIN (024), WASHOE COUNTY, NEVADA.)

**RULING
#6309**

GENERAL

I.

Application 65669 was filed on November 23, 1999, by Bright-Holland Corporation, a Nevada Corporation, to appropriate 8.0 cubic feet per second (cfs) of water from Rock Creek for the irrigation of 700 acres of land. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T.34N., R.23E., M.D.B.&M. The proposed place of use is described as being located within the NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ and a portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23; the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24; the NW $\frac{1}{4}$ and a portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 25; and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and portions of the NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, all within T.34N., R.23E., M.D.B.&M.¹

II.

Application 65941 was filed on January 27, 2000, by Bright-Holland Corporation, a Nevada Corporation, to appropriate 8.0 cfs of water from Red Mountain Creek for irrigation of 2,000 acres of land. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.35N., R.23E., M.D.B.&M. The proposed place of use is described as being located within the W $\frac{1}{2}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1; the E $\frac{1}{2}$ and the E $\frac{1}{2}$ W $\frac{1}{2}$ of

¹ File No. 65669, official records in the Office of the State Engineer.

Section 2; the E $\frac{1}{2}$ of Section 11; the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 12; the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 13 and the E $\frac{1}{2}$ of Section 14, all within T.34N., R.23E., M.D.B.&M; and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26; the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27; the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34; the NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 35 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36, all within T.35N., R.23E., M.D.B.&M.²

III.

Application 66306 was filed on April 25, 2000, by Bright-Holland Corporation, a Nevada Corporation, to appropriate 1.0 cfs of water from Granite Creek for the irrigation of 640 acres of land. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, T.34N., R.23E., M.D.B.&M. The proposed place of use is described as being located within the SE $\frac{1}{4}$ of Section 23; the W $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24; the NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25; the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, all within T.34N., R.23E., M.D.B.&M.³

IV.

Application 76152 was filed on August 14, 2007, by Bright-Holland Corporation, to appropriate 30.0 cfs, with an annual duty not to exceed 3,500 acre-feet, of water from Leadville Creek and Tributaries (a.k.a. South Willow Creek) for storage purposes. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T.36N., R.23E., M.D.B.&M. The proposed place of use is described as being within the W $\frac{1}{2}$ and Lot 2 of Section 1; the E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, Lot 4 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2; Lot 1 of Section 10; the E $\frac{1}{2}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ and portions of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11; the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 12; the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 13; the E $\frac{1}{2}$ of Section 14; the E $\frac{1}{2}$ of Section 23; the W $\frac{1}{2}$ W $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24; the NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 25 and the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, all within T.34N., R.23E., M.D.B.&M; and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26; the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27; the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34; the NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 35 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36, all within T.35N., R.23E., M.D.B.&M.⁴

² File No. 65941, official records in the Office of the State Engineer.

³ File No. 66306, official records in the Office of the State Engineer.

⁴ File No. 76152, official records in the Office of the State Engineer.

V.

Application 76153 was filed on August 14, 2007, by Bright-Holland Corporation, to appropriate 30.0 cfs, with an annual duty not to exceed 3,500 acre-feet, of water from Negro Creek and Tributaries for storage purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T.36N., R.23E., M.D.B.&M. The proposed place of use is described as being within the W $\frac{1}{2}$ and Lot 2 of Section 1; the E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, Lot 4 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2; Lot 1 of Section 10; the E $\frac{1}{2}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ and portions of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11; the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 12; the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 13; the E $\frac{1}{2}$ of Section 14; the E $\frac{1}{2}$ of Section 23; the W $\frac{1}{2}$ W $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24; the NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 25 and the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, all within T.34N., R.23E., M.D.B.&M; all of Section 4; all of Section 5; the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26; the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27; the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34; the NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of Section 35 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36, all within T.35N., R.23E., M.D.B.&M.; and the E $\frac{1}{2}$ of Section 33 and the SW $\frac{1}{4}$ of Section 34, all within T.36N., R.23E., M.D.B.&M.⁵

VI.

Application 76154 was filed on August 14, 2007, by Bright-Holland Corporation, to appropriate 30.0 cfs, with an annual duty not to exceed 3,500 acre-feet, of water from Red Mountain Creek and Tributaries for storage purposes. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.35N., R.23E., M.D.B.&M. The proposed place of use is described the same as on Application 76152.⁶

VII.

Application 76155 was filed on August 14, 2007, by Bright-Holland Corporation, to appropriate 30.0 cfs, with an annual duty not to exceed 3,500 acre-feet, of water from Cottonwood Creek and Tributaries for storage purposes. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, T.35N., R.23E., M.D.B.&M. The proposed place of use is described the same as on Application 76152.⁷

⁵ File No. 76153, official records in the Office of the State Engineer.

⁶ File No. 76154, official records in the Office of the State Engineer.

⁷ File No. 76155, official records in the Office of the State Engineer.

VIII.

Application 76156 was filed on August 14, 2007, by Bright-Holland Corporation, to appropriate 10.0 cfs, with an annual duty not to exceed 1,500 acre-feet, of water from Little Cottonwood Creek and Tributaries for storage purposes. The proposed point of diversion is described as being located within Lot 3 of Section 2, T.34N., R.23E., M.D.B.&M. The proposed place of use is described the same as on Application 76152.⁸

IX.

Application 76157 was filed on August 14, 2007, by Bright-Holland Corporation, to appropriate 10.0 cfs, with an annual duty not to exceed 1,500 acre-feet, of water from Barker Creek and Tributaries for storage purposes. The proposed point of diversion is described as being located within Lot 1 of Section 10, T.34N., R.23E., M.D.B.&M. The proposed place of use is described the same as on Application 76152.⁹

X.

Application 76158 was filed on August 14, 2007, by Bright-Holland Corporation, to appropriate 10.0 cfs, with an annual duty not to exceed 1,500 acre-feet, of water from Rock Creek and Tributaries for storage purposes. The proposed point of diversion is described as being located within the NW¼ SW¼ of Section 21, T.34N., R.23E., M.D.B.&M. The proposed place of use is described the same as on Application 76152.¹⁰

XI.

Application 76159 was filed on August 14, 2007, by Bright-Holland Corporation, to appropriate 10.0 cfs, with an annual duty not to exceed 1,500 acre-feet, of water from Granite Creek and Tributaries for storage purposes. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 35, T.34N., R.23E., M.D.B.&M. The proposed place of use is described the same as on Application 76152.¹¹

XII.

Application 79669 was filed on March 5, 2010, by Bright-Holland Co., a Nevada Corporation, to appropriate 8.0 cfs of water from Rock Creek for irrigation of 700 acres of land. The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 27, T.34N., R.23E., M.D.B.&M. The proposed place of use is described as being located within the NE¼, N½ SE¼, SE¼ SE¼, and a portion of the SW¼ SE¼ of Section 23; the NW¼ SW¼

⁸ File No. 76156, official records in the Office of the State Engineer.

⁹ File No. 76157, official records in the Office of the State Engineer.

¹⁰ File No. 76158, official records in the Office of the State Engineer.

¹¹ File No. 76159, official records in the Office of the State Engineer.

and the S½ SW¼ of Section 24; the NW¼ and a portion of the N½ SW¼ of Section 25; and the NE¼ NE¼ and portions of the NE¼ SE¼, SE¼ NE¼, SW¼ NE¼, and NW¼ NE¼ of Section 26, all within T.34N., R.23E., M.D.B.&M.¹²

XIII.

Application 65941 was timely protested by U.S.D.I. Bureau of Land Management, Winnemucca District on the following grounds:²

Red Mountain Creek is heavily diverted for irrigation purposes. The stream is currently diverted at the mounth [sic] of the canyon. Stream habitat conditions downstream of the current diversion are severely degraded. Without any baseflow within the channel channel maintenance does not occur. Consequently, this results in the lower channel only receiving annual flood flows, producing severe erosion. Additional diversion would also lessen the amount of recharge to the groundwater basin. This basin has been and is currently experiencing groundwater "mining". There have been recent efforts to enhance natural recharge, additional appropriations will agravate [sic] the situation within this basin.

XIV.

Application 66306 was timely protested by U.S.D.I. Bureau of Land Management, Winnemucca District on the following grounds:³

The point of diversion, as described in the public notice, is located on lands managed by the Bureau of Land Management. To date the applicant has not applied for, nor have they received, authorization to construct the works of diversion or the means of conveyance. Granite Creek has been identified as a potential recovery stream for Lahontan Cutthroat Trout. Due to this designation all surface disturbing activities will require consultation with the U.S. Fish and Wildlife Service.

XV.

Applications 76152, 76153, 76154, 76155, 76156, 76157, 76158, and 76159 were timely protested by the Jackson Family Partnership on the following grounds:^{4, 5, 6, 7, 8, 9, 10, 11}

The Jackson Family Partnership holds certificates 6555, 7387 & 7426 (permit #'s 18725, 20380 & 18401 respectively) in Basin 024. Please consider this formal protest to be included in any investigations, actions or reports on application #'s 76152 – 76159. Protestors hold grazing privileges [sic] on Granite Mtn. that could be adversely [sic] affected by this application. We reserve the right to supplement our protest as additional information is developed.

¹² File No. 79669, official records in the Office of the State Engineer.

XVI.

Applications 76152, 76153, 76154, 76155, 76156, 76157, 76158, and 76159 were timely protested by Midian Ranch (Jason and Tina Walters) and Dog Ranch (Ron and Dahlia Cole) on the following grounds.^{4, 5, 6, 7, 8, 9, 10, 11}

We are Midian Ranch (the Walters family) and Dog Ranch (the Cole family), and we believe that our status as a land owners and residents of the Hualapai Valley gives us standing on this issue. The stated use of "storage" in this application is misleading, as we believe that Bright Holland's eventual plan is to pump water out of the Hualapai Valley (also known as the Hualapai Flats) via a pipeline to the Sparks/Spanish Springs area, rather than reserve the water for agricultural use. We cite [sic] as our source Exhibit "A" of Bright Holland's Formal Protest Requesting Denial of Application No. 75887 thru 75921 (applicant High Rock Holding LLC) in which they mention "the potential for Bright Holland Corporation to convert its agricultural uses to a municipal use and export their water resources." They are also concerned that proposed uses may "adversely affect the Protestant's [Bright Holland] future uses including, without limitation, the export of its surface and groundwater from the Basin for its own benefit."

The effects on the already insufficient water supplies of the communities of Gerlach, Empire, and private residences in the area by such an undertaking are unknown. The ecological effects of "pooling and pumping" on the region are unknown. The Black Rock Desert contains numerous animal species (including endangered and protected ones) that are dependent on available water of this creek. Migratory flight paths of certain water birds are dependent on surface water being present in area. Land belonging to other residents and the Bureau of Land Management (or BLM) could also be affected by "pooling and pumping." We urge you to consult with the BLM before any applications are granted, as they may be unaware that their land and water rights are being affected.

Furthermore, the local economy of the region is partially dependent on hunting, ranching, and eco-tourism. The effects of Bright Holland Corporation's activities on these economically vital activities are unknown. Furthermore, the effects that "pooling and pumping" may have on the livability of the Hualapai Valley for its several dozen inhabitants are unknown. Resident's water availability – and the water table itself – may also be affected. All of these concerns should be addressed before additional rights are granted to the Bright Holland Corporation.

XVII.

Application 76153 was timely protested by High Rock Holding, LLC, a Nevada limited liability company on the following grounds:⁵

Prior actions by the State Engineer have denied applications to appropriate water Negro Creek based on the fact that the source was fully appropriated. Most notable of these is Permit 3495, filed by John H. Bruce on July 12, 1915. The State Engineer denied this application stating, "...that the water of the source applied for is entirely appropriated by prior rights and filings."

Subsequent to that denial, the State Engineer did issue additional appropriations (Permits 9463 and 11145). Since these permits were issued the State Engineer has not granted additional rights on Negro Creek and in fact has denied several other appropriations.

1. There is no unappropriated water at the source. The existing rights owned by the Protestant's and other right holders fully appropriate Negro Creek and its tributaries.
2. The Application, if granted, will conflict with the senior existing rights of the Protestant by taking water that normally would be used to serve the Protestant's existing senior rights.
3. Based on the information and belief, the requested diversion rate exceeds the normal base flow of Negro Creek. Appropriation of the 30 cfs would adversely impact the Protestant's senior water rights and those of other right holders on the system.
4. Based on information and belief the requested duty is already appropriated by the existing senior water rights on the system. The amount of water requested by the Applicant over and above the existing rights on the system cannot be generated.
5. The Application is deficient in that NRS 533.335(7) requires that the application shall contain the estimated costs of the proposed works. Application 76153 does not contain this information.
6. The Application is deficient in that NRS 533.340(6) requires that, for applications contemplating the storage of waters, the dimensions and locations of the proposed dam, the capacity of the proposed reservoir and a description of the lands to be submerged be included. An examination of Application 76153 and the supporting map on file fails to provide this information. In fact, Under Item 12 of Application 76153 it states that "*the existing Fly Reservoir may be expanded. Additional storage sites are proposed on lands owned or controlled by the applicant,*" However nowhere on the map nor the Application is there a description of these additional storage facilities that includes the information specifically requested by NRS 533.340(6).

7. The Application is deficient in that it requests eight (8) years in which to construct the works of diversion. NRS 533.380(1) (a) requires that the time set forth by the State Engineer not exceed five (5) years.
8. NRS 533.370(2) (c) requires that the Applicant provide the State Engineer of his financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence. The Application is deficient in that it does not include this information.

In addition, NRS 533.368 provides that the State Engineer determine the need for hydrological, environmental or other studies before he makes a final determination on an application to appropriate. The cost of such a study is to be paid by Applicant and performed by the State Engineer or a person designated by him. Prior to any action being taken on this application, the State Engineer should require these studies be performed and require the Applicant to bear the full cost.

NRS 533.375 states that for applications proposing to divert more than 10 cubic feet per second of water, State Engineer may require submission of the articles of incorporation, and the names and places of residence of directors and officers, and the amount of its authorized and of its paid-up capital. Prior to any further consideration of this Application, the State Engineer should require the submission of this information.

Should the State Engineer determined [sic] that there is additional water available for appropriation on Negro Creek, the Protestant wishes to point out that it has an existing application pending before the State Engineer for consideration. Application 38405 was filed in 1979 to appropriate 900 acre-feet of water from Negro Creek. High Rock Holding, LLC is the current owner of this right and requests that, should the State Engineer find additional water is available at the source that its application be acted upon prior to acting on any application filed by Bright Holland.

In conclusion, it is the belief of the Protestant that the existing senior appropriations fully appropriate Negro Creek and that there is no unappropriated water at the source. NRS 533.370 prohibits the State Engineer from granting an application to appropriate if there is no unappropriated water at the source or if it will conflict with existing rights. Should additional water be available then High Rock Holding, LLC's existing application is next in line to be granted that water. Any further issuance of Bright Holland's application ahead of High Rock's would conflict with High Rock's water rights. Therefore, High Rock Holding, LLC, respectfully requests that Application 76153 be denied.

XVIII.

Application 76153 was timely protested by Sylvia Fascio on the following grounds:⁵

Fascio Enterprises, Inc. holds Permit #9463 (Certificate #4786) and Permit #11145 (Certificate #4787) from 1931 and 1944, respectively in Basin 024. These existing senior water rights owned by Fascio Enterprises, Inc., Sylvia Fascio, are for irrigation purposes from Negro Creek and its tributaries. Negro Creek and its tributaries are considered fully appropriated by the State Engineer's office. The granting of Application #76153 would have a significant impact to the senior water right holders from this source of water. The Protestant requests that this formal protest be included in any investigations and hearings regarding Applications #76152 - #76155 filed by Bright Holland Corporation.

XIX.

Application 76158 was timely protested by Clifford J and Victoria Williams on the following grounds:¹⁰

Rock Creek has run through our property (Rock Creek Ranch) for many years; since I was a child back in the 1940s. The water from this creek has been the main source of water for our stock for all the years we have owned the property. If the water is diverted we will no longer have a source of stock water. Diversion of Rock Creek will also affect the wildlife in that particular area, deer, antelope, ducks, chucker, fish, etc. Rock Creek water is also the only source of water for a cabin on the north side of our property. Our ranch is also the base camp for one of the Nevada Animal Damage Control Mountain Lion Specialists, he also works for U.S. Dept. of Agriculture and NDOW; he needs the water from Rock Creek for his horses and 18 lion dogs.

XX.

Application 76159 was timely protested by Juniper Hills Partners, LLC, a Nevada limited liability company on grounds nearly identical to the High Rock Holding protest to Application 76153, previously stated in this ruling, but in addition, the protest ground:¹¹

The proposed point of diversion of Application 76159 is on land owned by the United States of America and administered by the U.S. Department of Interior, BLM. Thus the Applicant does not control the land from which the water from Granite Creek is proposed to be diverted and can neither construct the diversion works nor place the water to beneficial use.

XXI.

Application 79669 was timely protested by Russell David Hays III on the following grounds:¹²

This project is located on public property, managed by the Winnemucca District of the Bureau of Land Management. There are no management systems or cooperative agreements in place for this project.

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 protested Applications 65941, 66306, 76152, 76153, 76154, 76155, 76156, 76157, 76158, 76159 and 79669 and a hearing is not necessary.

II.

Nevada Revised Statute 533.370(2) provides that the State Engineer must reject an application where there is no unappropriated water in the proposed source of supply or if the proposed appropriation will conflict with existing water rights. One of the initial steps in making this determination is to identify all active water rights on the surface 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. The State Engineer conducted a recent review of this database and finds:

Active Water Rights on Barker Creek						
Permit Number	Status	Certificate Number	Manner of Use	Diversion (cfs)	Duty	Duty Units
76157	RFP		STO	10.00	1,500.00	AFA
R05487	RES		STK	0.031	22.43	AFA
V09119	VST		STK	0.044		AFA

Active Water Rights on Cottonwood Creek

Permit Number	Status	Certificate Number	Manner of Use	Diversion (cfs)	Duty	Duty Units
2010	CER	13617	IRR	1.20	240.00	AFS
2579	CER	7692	IRR	3.20	600.00	AFS
76155	RFP		STO	30.00	3,500.00	AFA
V01275	VST		STO	50.00	4,379.00	AFS
V09181	VST		COM	0.0078	2.00	AFA

Active Water Rights on Granite Creek

Permit Number	Status	Certificate Number	Manner of Use	Diversion (cfs)	Duty	Duty Units
51623	CER	13589	STK	0.01	4.34	AFA
51624	CER	13625	IRR	4.99	1,278.00	AFS
66306	RFP		IRR	1.00	2,560.00	AFA
76159	RFP		STO	10.00	1,500.00	AFA
81716	PER		COM	0.01	2.00	AFA
V01277	VST		IRR		522.40	AFA

Active Water Rights on Leadville Creek

Permit Number	Status	Certificate Number	Manner of Use	Diversion (cfs)	Duty	Duty Units
20380	CER	7387	IRR	5.00	2,821.80	AFA
76152	RFP		STO	30.00	3,500.00	AFA

Active Water Rights on Little Cottonwood Creek

Permit Number	Status	Certificate Number	Manner of Use	Diversion (cfs)	Duty	Duty Units
67047	PER		IRR	0.75	160.00	AFA
76156	RFP		STO	10.00	1,500.00	AFA
V09132	VST		STK	0.068		
V09133	VST		STK	0.068		
V09294	VST		IRR	15.00		AFS

Active Water Rights on Negro Creek

Permit Number	Status	Certificate Number	Manner of Use	Diversion (cfs)	Duty	Duty Units
5733	CER	1146	IRR	0.8206	246.18	AFS
9463	CER	4786	IRR	0.40	54.16	AFA
11145	CER	4787	IRR	0.50	167.32	AFA
76153	RFP		STO	30.00	3,500.00	AFA
V09204	VST		STK	0.068		

Active Water Rights on Red Mountain Creek

Permit Number	Status	Certificate Number	Manner of Use	Diversion (cfs)	Duty	Duty Units
4048	CER	7371	IRR	1.52	202.85	AFS
65941	RFP		IRR	8.00	8,000.00	AFA
76154	RFP		STO	30.00	3,500.00	AFA

Active Water Rights on Rock Creek

Permit Number	Status	Certificate Number	Manner of Use	Diversion (cfs)	Duty	Duty Units
65669	RFA		IRR	8.00	2,800.00	AFA
76158	RFP		STO	10.00	1,500.00	AFA
79669	RFP		IRR	8.00	2,800.00	AFA
V01278	VST		IRR	25.00	469.90	AFA

Where:

- | | | |
|----------------------------------|---------------------|----------------------------|
| CER = Certificated | COM = Commercial | AFA = Acre-feet annually |
| PER = Permitted | IRR = Irrigation | AFS = Acre-feet per season |
| RES = Reserved Right | STK = Stockwatering | |
| RFA = Ready for Action | STO = Storage | |
| RFP = Ready for Action Protested | | |
| VST = Claim of Vested Right | | |

III.

Barker Creek

Over the years, personnel from the Office of the State Engineer have conducted field investigations of Barker Creek finding:

Barker Creek Stream Flow Measurements

Date	Measurement (cfs)	Method	Notes
5/21/2009	0.00		Dry
3/28/2012	0.00		Dry
7/10/2012	0.00		Dry

The State Engineer estimates that the waters of Barker Creek are committed up to 0.075 cfs under Claim of Vested Right V09119 and water right filing R05487. At the time of the field investigations, no water was observed in Barker Creek. The State Engineer finds that Barker Creek cannot produce a reasonably sustained diversion or duty to satisfy Application 76157 (requesting 10.00 cfs), and therefore finds that there is insufficient water at the source.

IV.

Cottonwood Creek

Over the years, personnel from the Office of the State Engineer have conducted field investigations of Cottonwood Creek finding:

Date	Measurement (cfs)	Method	Notes
6/7/1911	15.00		
6/8/1913	0.50		
5/21/2009	0.00	Visual	Cottonwood Creek and Tributaries
3/28/2012	0.00	Visual	Cottonwood Creek and Tributaries
7/9/2012	0.00	Visual	Cottonwood Creek and Tributaries
5/22/2009	0.10	Visual	Upper Cottonwood Creek
3/28/2012	na		Upper Cottonwood Creek - Not visited
7/9/2012	0.00	Visual	Upper Cottonwood Creek

The State Engineer estimates that the waters of Cottonwood Creek are committed up to 54.41 cfs under Permit 2010, Certificate 13617; Permit 2579, Certificate 7692; and Claims of Vested Right V01275 and V09181. In the Division of Water Resources *Water Resources Bulletin No. 37*, the average annual runoff of Cottonwood Creek was determined to be 540 acre-feet.¹³ During the earliest field investigation, a flow of 15.00 cfs was observed. Subsequent field investigations observed a decline in the flow of the creek with the most recent field investigations observing no flow. The State Engineer finds that Cottonwood Creek cannot produce a reasonably sustained diversion or duty to satisfy Application 76155 (requesting 30.00 cfs), and therefore finds that there is insufficient water at the source.

V.

Granite Creek

Over the years, personnel from the Office of the State Engineer have conducted field investigations of Granite Creek finding:

Date	Measurement (cfs)	Method	Notes
6/7/1911	10.00		Flows year round
5/22/2009	1.39	Pygmy meter	
3/27/2012	1.00	Pygmy meter	
7/9/2012	0.67	V-notch weir	

¹³ J.R. Harrill, *Hydrologic Response to Irrigation Pumping in Hualapai Flat, Washoe, Pershing and Humboldt Counties, Nevada 1960 – 1967*, Water Resources Bulletin No. 37, Nevada Department of Conservation and Natural Resources, p. 28, 1969.

The State Engineer estimates that the waters of Granite Creek are committed up to 5.01 cfs under Permit 51623, Certificate 13589; Permit 51624, Certificate 13625; Permit 81716 and Claim of Vested Right V01277. In the Division of Water Resources *Water Resources Bulletin No. 37*, the average annual runoff of Granite Creek was determined to be 290 acre-feet.¹³ During the earliest field investigation, a flow of 10.00 cfs was observed. Subsequent field investigations observed a decline in the flow of the creek with the most recent field investigations observing little flow. The State Engineer finds that Granite Creek cannot produce a reasonably sustained diversion or duty to satisfy Applications 66306 (requesting 1.00 cfs) and 76159 (requesting 10.00 cfs), and therefore finds that there is insufficient water at the source.

VI.

Leadville Creek

Over the years, personnel from the Office of the State Engineer have conducted field investigations of Leadville Creek finding:

Date	Measurement (cfs)	Method	Notes
5/22/2009	na		Not visited
3/27/2012	na		Not visited
7/9/2012	0.00	Visual	Dry

The State Engineer finds that the waters of Leadville Creek are committed up to 5.00 cfs under Permit 20380, Certificate 7387. At the time of the most recent field investigation, no water was observed in Leadville Creek. The State Engineer finds that Leadville Creek cannot produce a reasonably sustained diversion or duty to satisfy Application 76152 (requesting 30.00 cfs), and therefore finds that there is insufficient water at the source.

VII.

Little Cottonwood Creek

Over the years, personnel from the Office of the State Engineer have conducted field investigations of Little Cottonwood Creek finding:

Date	Measurement (cfs)	Method	Notes
5/22/2009	na		Not visited
3/28/2012	0.09	V-notch weir	
7/9/2012	0.00	Visual	No water present

The State Engineer estimates that the waters of Little Cottonwood Creek are committed up to 15.82 cfs under Permit 67047 and Claims of Vested Right V09132, V09133, and V09294. In the Division of Water Resources *Water Resources Bulletin No. 37*, the average annual runoff of Little Cottonwood Creek was determined to be 120 acre-feet.¹³ During the earliest field investigation, a flow of 0.09 cfs was observed. Subsequent field investigations observed a decline in the flow of the creek with the most recent field investigations observing no flow. The State Engineer finds that Little Cottonwood Creek cannot produce a reasonably sustained diversion or duty to satisfy Application 76156 (requesting 10.00 cfs), and therefore finds that there is insufficient water at the source.

VIII.

Negro Creek

Over the years, personnel from the Office of the State Engineer have conducted field investigations of Negro Creek finding:

Date	Measurement (cfs)	Method	Notes
3/7/1911	29.10		Flows year round
6/3/1911	14.20		
6/7/1911	13.50		
4/1/1912	9.60		
6/19/1913	0.75		At the top
6/19/1913	trickle		At the bottom
5/21/2009	0.61	Pygmy meter	
3/28/2012	0.70	Pygmy meter	
7/10/2012	0.00	Visual	Water present but no measurable flow

The State Engineer estimates that the waters of Negro Creek are committed up to 1.79 cfs under Permit 5733, Certificate 1146; Permit 9463, Certificate 4786; Permit 11145, Certificate 4787 and Claim of Vested Right V09204. In the Division of Water Resources *Water Resources Bulletin No. 37*, the average annual runoff of Negro Creek was determined to be 230 acre-feet.¹³ During the earliest field investigation, a flow of 29.10 cfs was observed. Subsequent field investigations observed a decline in the flow of the creek with the most recent field investigations observing little to no flow. The State Engineer finds that Negro Creek cannot produce a reasonably sustained diversion or duty to satisfy Application 76153 (requesting 30.00 cfs), and therefore finds that there is insufficient water at the source.

On May 4, 1917, the State Engineer denied Application 3495 seeking to appropriate 1.00 cfs of the waters of Negro Creek. The denial stated “Deny the same on the ground that the waters of the source applied for is entirely appropriated.”¹⁴

In a ruling dated October 1, 1935, the State Engineer denied Application 7392 seeking to appropriate 3 miners inches (3/40 cfs) of the waters of Negro Creek. The denial stated that the application “...be denied, on the ground that there is no unappropriated water in the sources mentioned in said applications.”¹⁵

In Ruling No. 6200, dated October 10, 2012, the State Engineer denied Application 38405, seeking to appropriate 10 cfs, with an annual duty not to exceed 900 acre-feet, of the waters of Negro Creek. The denial stated that the application “...is hereby denied on the grounds that there is insufficient water at the proposed source.”¹⁶

IX.

Red Mountain Creek

Over the years, personnel from the Office of the State Engineer have conducted field investigations of Red Mountain Creek finding:

Date	Measurement (cfs)	Method	Notes
6/7/1911	5.00		flows till about June 15 then goes dry
6/18/1913	0.50		
5/21/2009	0.54	V-notch weir	
3/28/2012	0.62	V-notch weir	
7/9/2012	0.00	Visual	

The State Engineer finds that the waters of Red Mountain Creek are committed up to 1.52 cfs under Permit 4048, Certificate 7371. In the Division of Water Resources *Water Resources Bulletin No. 37*, the average annual runoff of Red Mountain Creek was determined to be 1,300 acre-feet.¹³ During the earliest field investigation, a flow of 5.00 cfs was observed. Subsequent field investigations observed a decline in the flow of the creek with the most recent field investigations observing little to no flow. The State Engineer finds that Red Mountain Creek cannot produce a reasonably sustained diversion or duty to satisfy Applications 65941 (requesting 8.00 cfs) and 76154 (requesting 30.00 cfs), and therefore finds that there is insufficient water at the source.

¹⁴ File No. 3495, official records in the Office of the State Engineer.

¹⁵ File No. 7392, official records in the Office of the State Engineer.

¹⁶ State Engineer’s Ruling No. 6200, dated October 10, 2012, official records in the Office of the State Engineer.

In a letter dated February 7, 1918, the State Engineer denied Application 2833 seeking to appropriate 20.00 cfs of the waters of Red Mountain Creek. The letter stated that the appropriations of the creek "...fully cover all flow of the stream."¹⁷

X.

Rock Creek

Over the years, personnel from the Office of the State Engineer have conducted field investigations of Rock Creek finding:

Date	Measurement (cfs)	Method	Notes
6/7/1911	4.00		flows till about June 15 then goes dry
5/22/2009	1.96	V-notch weir	middle portion
3/28/2012	0.86	Pygmy meter	middle portion
7/9/2012	0.24	Pygmy meter	middle portion
5/22/2009	0.00	Visual	lower portion
3/28/2012	0.00	Visual	lower portion
7/9/2012	0.00	Visual	lower portion

The State Engineer estimates that the waters of Rock Creek are committed up to 25.00 cfs under Claim of Vested Right V01278. In the Division of Water Resources *Water Resources Bulletin No. 37*, the average annual runoff of Rock Creek was determined to be 960 acre-feet.¹³ During the earliest field investigation, a flow of 4.00 cfs was observed. Subsequent field investigations observed a decline in the flow of the creek with the most recent field investigations observing little to no flow. The State Engineer finds that Rock Creek cannot produce a reasonably sustained diversion or duty to satisfy Applications 65669 (requesting 8.00 cfs) and 76158 (requesting 10.00 cfs), and therefore finds that there is insufficient water at the source.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁸

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁹

¹⁷ File No. 2833, official records in the Office of the State Engineer.

¹⁸ NRS Chapter 533.

¹⁹ NRS § 533.370(2).

- 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.

Based on historic stream flow data and field investigations, the State Engineer concludes that there is no unappropriated water at the proposed sources to support the approval of Applications 65669, 65941, 66306, 76152, 76153, 76154, 76155, 76156, 76157, 76158, 76159, and 79669; therefore, said applications are subject to denial.

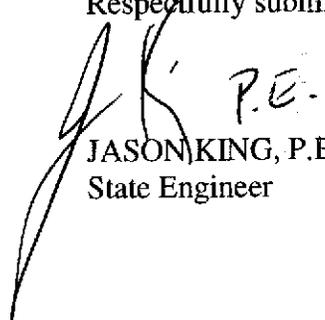
RULING

Application 65669 is hereby denied on the grounds that there is insufficient water at the proposed source and its approval would conflict with existing rights and would threaten to prove detrimental to the public interest.

Applications 65941, 66306, 76152, 76154, 76155, 76156, 76157, and 79669 are hereby denied on the grounds that there is insufficient water at the proposed sources and their approval would conflict with existing rights and would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

The protests to Applications 76153, 76158, and 76159 are upheld in part, and Applications 76153, 76158, and 76159 are hereby denied on the grounds that there is insufficient water at the proposed sources and their approval would conflict with existing rights and would 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 14th day of
April, 2015.