

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

IN THE MATTER OF APPLICATIONS)
64561, 64562, 64563, 64564, 64565, 64566,)
64567, 64568, 64569, 64570, 64571 AND)
64572 FILED TO APPROPRIATE THE)
PUBLIC WATER FROM VARIOUS)
SPRINGS WITHIN THE DAYTON)
VALLEY HYDROGRAPHIC BASIN)
(103), STOREY COUNTY, NEVADA.)

RULING

#5449

GENERAL

I.

Application 64561 was filed on October 28, 1998, by Worth Borda to appropriate 0.50 cubic feet per second (cfs) of water for the irrigation of 800 acres of land and domestic purposes. The source of the water is from Spring No. 1, which is described as being located in the NW¼ SE¼ of Section 8, T.17N., R.22E., M.D.B.&M. The place of use is described as being located in the E½ SW¼ and the W½ SE¼ of Section 8 and all of Section 17, T.17N., R.22E., M.D.B.&M.¹

II.

Application 64562 was filed on October 28, 1998, by Worth Borda to appropriate 0.50 cfs of water for the irrigation of 800 acres of land and domestic purposes. The source of the water is from Spring No. 2, which is described as being located in the NW¼ SE¼ of Section 8, T.17N., R.22E., M.D.B.&M. The place of use is as described under Application 64561.²

III.

Application 64563 was filed on October 28, 1998, by Worth Borda to appropriate 0.50 cfs of water for the irrigation of 800 acres of land and domestic purposes. The source of the water is from Spring No. 3, which is described as being located in the NW¼

¹ File No. 64561, official records in the Office of the State Engineer.

² File No. 64562, official records in the Office of the State Engineer.

SE¼ of Section 8, T.17N., R.22E., M.D.B.&M. The place of use is as described under Application 64561.³

IV.

Application 64564 was filed on October 28, 1998, by Worth Borda to appropriate 0.50 cfs of water for the irrigation of 800 acres of land and domestic purposes. The source of the water is from Spring No. 4, which is described as being located in the NE¼ SW¼ of Section 8, T.17N., R.22E., M.D.B.&M. The place of use is as described under Application 64561.⁴

V.

Application 64565 was filed on October 28, 1998, by Worth Borda to appropriate 0.50 cfs of water for the irrigation of 800 acres of land and domestic purposes. The source of the water is from Spring No. 5, which is described as being located in the NE¼ SW¼ of Section 8, T.17N., R.22E., M.D.B.&M. The place of use is as described under Application 64561.⁵

VI.

Application 64566 was filed on October 28, 1998, by Worth Borda to appropriate 0.50 cfs of water for the irrigation of 800 acres of land and domestic purposes. The source of the water is from Spring No. 6, which is described as being located in the NE¼ SW¼ of Section 8, T.17N., R.22E., M.D.B.&M. The place of use is as described under Application 64561.⁶

VII.

Application 64567 was filed on October 28, 1998, by Worth Borda to appropriate 0.50 cfs of water for the irrigation of 800 acres of land and domestic purposes. The source of the water is from Spring No. 7, which is described as being located in the NE¼ SW¼ of Section 8, T.17N., R.22E., M.D.B.&M. The place of use is as described under Application 64561.⁷

³ File No. 64563, official records in the Office of the State Engineer.

⁴ File No. 64564, official records in the Office of the State Engineer.

⁵ File No. 64565, official records in the Office of the State Engineer.

⁶ File No. 64566, official records in the Office of the State Engineer.

⁷ File No. 64567, official records in the Office of the State Engineer.

VIII.

Application 64568 was filed on October 28, 1998, by Worth Borda to appropriate 0.50 cfs of water for the irrigation of 800 acres of land and domestic purposes. The source of the water is from Spring No. 8, which is described as being located in the SE¼ SW¼ of Section 8, T.17N., R.22E., M.D.B.&M. The place of use is as described under Application 64561.⁸

IX.

Application 64569 was filed on October 28, 1998, by Worth Borda to appropriate 0.50 cfs of water for the irrigation of 800 acres of land and domestic purposes. The source of the water is from Spring No. 9, which is described as being located in the SE¼ SW¼ of Section 8, T.17N., R.22E., M.D.B.&M. The place of use is as described under Application 64561.⁹

X.

Application 64570 was filed on October 28, 1998, by Worth Borda to appropriate 0.50 cfs of water for the irrigation of 800 acres of land and domestic purposes. The source of the water is from Spring No. 10, which is described as being located in the SE¼ SW¼ of Section 8, T.17N., R.22E., M.D.B.&M. The place of use is as described under Application 64561.¹⁰

XI.

Application 64571 was filed on October 28, 1998, by Worth Borda to appropriate 0.50 cfs of water for the irrigation of 80 acres of land and domestic purposes. The source of the water is from Spring No. 11, which is described as being located in the SW¼ NW¼ of Section 13, T.17N., R.21E., M.D.B.&M. The place of use is described as being located within the NW¼ SW¼ and SW¼ NW¼ of Section 13, T.17N., R.21E., M.D.B.&M.¹¹

XII.

Application 64572 was filed on October 28, 1998, by Worth Borda to appropriate 0.50 cfs of water for the irrigation of 80 acres of land and domestic purposes. The source

⁸ File No. 64568, official records in the Office of the State Engineer.

⁹ File No. 64569, official records in the Office of the State Engineer.

¹⁰ File No. 64570, official records in the Office of the State Engineer.

¹¹ File No. 64571, official records in the Office of the State Engineer.

of the water is from Spring No. 12, which is described as being located in the SW¼ NW¼ of Section 13, T.17N., R.21E., M.D.B.&M. The place of use is as described under Application 64571.¹²

XIII.

Applications 64561 through 64572, inclusive, were timely protested by Basalite, a Division of Pacific Coast Building Products, Inc. (Basalite). The applications were protested on the grounds that there is no unappropriated water at the source, the proposed use conflicts with existing rights, and the proposed use is detrimental to the public interest.

The protestant requested that the State Engineer deny Applications 64561 through 64572, inclusive.¹⁻¹²

FINDINGS OF FACT

I.

Applications 64561, 64562, 64563, 64564, 64565, 64566, 64567, 64568, 64569, and 64570 were filed to appropriate water for the irrigation of 800 acres of land and for a secondary domestic use. Applications 64571 and 64572 were filed to irrigate 80 acres of land and for a secondary domestic use. The source of water for Applications 64561 through 64570, inclusive, is from a nesting of springs located on the south facing slope of the Flowery Range within Section 8, T.17N., R.22E., M.D.B.&M. (See attached map) The location of the springs under Applications 64571 and 64572 are positioned approximately two miles west, within the NW¼ of Section 13, T.17N., R.21E., M.D.B.&M. These two springs are contained within a separate drainage, which does not contribute to the discharge of the springs under Applications 64561 through 64570, inclusive. All of the applications were filed for a diversion rate of 0.5 cfs.

The State Engineer finds that Applications 64561 through 64572, inclusive, are approximately three miles east of the Carson River and are located within the Dayton Valley Hydrographic Basin. Because of their distance from the Carson River and limited discharge, the above applications are not tributary to the Carson River.

¹² File No. 64572, official records in the Office of the State Engineer.

II.

In a review of the records of the State Engineer it was determined that Permits 55473, 56460, 56461, 56462, 56463, 56464 and 56465, Certificates 14128, 15008, 15267, 15268, 15269, 15270 and 15271, respectively, were issued to Basalite on springs within the same general source area as those applied for under Applications 64561 through 64570, inclusive.

The State Engineer finds that Basalite has existing rights on springs within the same source area as those applied for by Worth Borda and has placed those water rights to beneficial use. The State Engineer further finds that to approve additional water rights as proposed by Applications 64561 through 64570, inclusive, would infringe upon those existing rights and create competition for a limited amount of water, which for all practical purposes cannot be separated into discrete springs.

Also, that prior to filing Applications 64561 through 64572, inclusive, Permits 41287 through 41298, inclusive, were issued to the Borda Brothers on December 11, 1984, and subsequently withdrawn by their agent, Bruce R. Scott of Resource Concepts, Inc., on February 11, 1988. Permits 41287 through 41298, inclusive, were issued for the irrigation of the same place of use described under Applications 64561 through 64572, inclusive.

III.

Certificates 14128, 15008, 15267, 15268, 15269, 15270 and 15271 were issued for a total combined flow rate of 0.125 cfs and a duty not to exceed 40 acre-feet annually. The basis for the certificated flow rate and annual duty were from Report of Field Investigation No. 882, dated May 22, 1991, and from Report of Informal Field Investigation for Proof of Beneficial Use dated August 6, 1998.¹³ The flow rate of 0.125 cfs was measured at a point located within the NW¼ SW¼ SE¼ of Section 8, T.17N., R.22E., which is below the confluence of five of the springs under consideration in this action. The State Engineer finds that based on the flow measurement taken in 1991 and flow meter readings taken in support of the Proof of Beneficial Use filed under Permits 55473, 56460, 56461, 56462, 56463, 56464, and 56465 there is a limited amount of water

¹³ File Nos. 56460 through 56465, inclusive, official records in the Office of the State Engineer.

produced by the subject spring area and that Basalite is making beneficial use of all of this water.

IV.

Applications 64571 and 64572 were filed on springs that are within Section 13, T.17N., R.21E., M.D.B.&M. Upon review of the State Engineer's records, it was determined that James F. and Oline L. Colfer filed Proof of Appropriation V-02531 on November 26, 1963, for the irrigation of 15 acres of land located in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 13, T.17N., R.21E. from Tachino Springs located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T.17N., R.21E. This Proof of Appropriation claims a diversion rate of 0.50 cfs with a priority date of 1880.¹⁴ The State Engineer finds that a claim of historic use of water is downstream of Applications 64571 and 64572. The State Engineer further finds that the springs described under Applications 64571 and 64572 are located over two miles from the protestant's water rights and will not impact their existing rights.

V.

An informal field investigation of Applications 64571 and 64572 was conducted on May 13, 2004, by staff of the Division of Water Resources.¹⁵ No discrete point of diversion was found under Application 64571; however, a small impoundment, approximately 300 square feet in surface area, was discovered behind thick brush. No water was observed flowing from the impoundment.

The point of diversion under Application 64572, which is located approximately 300 feet west of Application 64571, consisted of a seep area with standing water. No measurement was made because of the small amount of water and lack of a defined channel in which to concentrate the flow.

Based on the observations made by Division Staff and Report of Field Investigation No. 1054, the State Engineer finds that there is insufficient water for irrigation purposes as proposed under Applications 64571 and 64572, but sufficient flow exists for the watering of wildlife.

¹⁴ File No. V-02531, official records in the Office of the State Engineer.

¹⁵ Report of Field Investigation No. 1054, official records in the Office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁶

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁷

- 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 protectible interests in 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.

From the data available from the field measurement of the flow from the springs in May 1991 and May 2004 and the meter readings submitted under Permits 55473 and 56460 through 56465 in support of Proof of Beneficial Use and follow-up investigation by this office to verify the data submitted, the State Engineer concludes that there is insufficient flow produced by the spring sources to support Applications 64561 through 64570, inclusive.

IV.

The springs requested for appropriation under Applications 64571 and 64572 are approximately two miles west of the water rights of the protestant and as such will have no impact on their existing rights. However, Proof of Appropriation V-02531, which claims water from Tachino Springs is positioned down stream of the proposed applications. The State Engineer concludes that the approval of Applications 64571 and 64572 would conflict with existing rights, and that their approval would threaten the public interest as claimed.

¹⁶ NRS chapter 533.

¹⁷ NRS § 533.370(4).

RULING

Applications 64561, 64562, 64563, 64564, 64565, 64566, 64567, 64568, 64569, 64570, 64571 and 64572 are hereby denied on the grounds that there is insufficient water at the proposed sources and that granting said applications would conflict with existing surface water rights.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Hugh Ricci, P.E.", is written over a faint circular official seal.

HUGH RICCI, P.E.
State Engineer

HR/KH/jm

Dated this 16th day of

November 2004.

