

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

IN THE MATTER OF APPLICATION 72178)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNNAMED SPRING WITHIN)
THE WARNER VALLEY HYDROGRAPHIC)
BASIN (013), WASHOE COUNTY, NEVADA.)

RULING

5614

GENERAL

I.

Application 72178 was filed on January 31, 2005, by Valerie Asa to appropriate 0.2 cubic feet per second (cfs), not to exceed 120.0 acre-feet per year, of water from a source identified upon the application as an unnamed spring. The proposed manner and place of use is for irrigation and domestic purposes within 30.0 acres of land located within portions of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T.46N., R.19E., M.D.B.&M. The proposed point of diversion is described on the water right application and its supporting map as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 33.¹

FINDINGS OF FACT

I.

The Office of the State Engineer and the United States Geological Survey have for many years, collected and recorded spring flow data from numerous sites throughout the state. Most of this information relates either to the state's larger springs, or those that are tributaries to stream systems that have been formally adjudicated. A complete record has not been made for the majority of the small, isolated springs that are found throughout the basin and range. A search of the spring flow records maintained within the Office of the State Engineer failed to identify any information specific to the flow of the subject unnamed spring. Given the lack of spring flow data, a decision was

¹ File No. 72178, official records in the Office of the State Engineer.

made to conduct an informal field investigation at the proposed point of diversion requested under Application 72178. The purpose of this visit was to determine the amount of water that the spring was capable of producing. Once the spring flow has been recorded the State Engineer finds that the suitability of the Applicant's spring as an irrigation source can be determined.

II.

The guidelines governing the appropriation and allocation of surface water are set forth within the Nevada Revised Statutes (NRS). Under the provisions of NRS § 533.370(5), before an application that requests a new appropriation of water can be considered for approval, it must be determined that there is unappropriated water present at the source. Unappropriated water may be defined as the amount of water that is available for capture once all senior water rights have been fully served, including any customary use of the water by wildlife. If the amount of water committed under existing water rights exceeds the amount of sustained flow produced by the source, additional requests for water through the State Engineer's application process are generally denied.

Similarly, if the source of surface water is found to be dominated by dry or extremely low flow conditions, its suitability as a reliable source of water for most manners of use is brought into question. For a surface source located within the northern portion of the state to qualify as a legitimate source of irrigation water, it must be capable of sustaining an annual flow that can provide 4.0 acre feet of water per acre of land. At this level, the irrigation of the Applicant's 30.0 acre proposed place of use would require 120.0 acre-feet of water per year, with an associated diversion rate equal to 0.166 cfs.

The State Engineer understands that an undeveloped spring can be improved to increase its spring flow. However, there are many instances where the spring's base flow is so minimal, that even

under developed conditions it will fall well below what is required to support the proposed manner of use.

To provide the State Engineer with an accurate assessment of the spring's potential for development, a decision was made to conduct an informal field investigation at the proposed point of diversion. Accordingly, a site inspection was undertaken by representatives of the State Engineer on August 4, 2005. The observations made during this inspection are presented within Report of Field Investigation No. 1070, a copy of which has been sent to the Applicant and her agent prior to the issuance of this ruling.¹

Report No. 1070, states that, "No live, or standing water was detected," leading to the conclusion that, "The source applied for seems incapable of providing any surface irrigation water on a reliable basis."² Based upon the information stated within Report No. 1070, the State Engineer finds that there is insufficient water available to support the manner of use described under Application 72178.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

² Report of Field Investigation No. 1070, a copy of which is filed within Application 72178, official records in the Office of the State Engineer.

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(5).

- C. the proposed use or change conflicts with protectible 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.

Application 72178, requests an appropriation of water for a primary irrigation use that spans the entire year. A recent field investigation that was performed during the traditional irrigation season failed to detect a surface expression of water at the proposed point of diversion. Based upon this fact, the State Engineer concludes the following:

- 1. The issue of whether there is "unappropriated" water at the source is therefore reduced to the basic question of, is there any water available generated by the spring, with the answer being, "no".
- 2. The issue of the effect the approval of the subject application would have on existing water rights on the source is moot, since none exist.

RULING

Application 72178 is hereby denied on the grounds that there is insufficient water generated by this source to satisfy the Applicants proposed manner of use.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MB/jm

Dated this 28th day of
April, 2006.