

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

IN THE MATTER OF APPLICATIONS)
77517, 77518, 77519 AND 77520 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN)
THE SPRING VALLEY HYDROGRAPHIC)
BASIN (184), WHITE PINE COUNTY,)
NEVADA.)

RULING

#6129

GENERAL

I.

Application 77517 was filed on October 21, 2008, by the Southern Nevada Water Authority to appropriate 0.08702 cubic feet per second (cfs), not to exceed 63 acre-feet annually (afa), from an underground source for wildlife purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T.12N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 2.¹

II.

Application 77518 was filed on October 21, 2008, by the Southern Nevada Water Authority to appropriate 0.0118125 cfs from an underground source for stock water purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T.12N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 2.²

III.

Application 77519 was filed on October 21, 2008, by the Southern Nevada Water Authority to appropriate 0.0118125 cfs from an underground source for stock water purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T.12N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 2.³

IV.

Application 77520 was filed on October 21, 2008, by the Southern Nevada Water Authority to appropriate 0.0118125 cfs from an underground source for stock water

¹ File No. 77517, official records in the Office of the State Engineer.

² File No. 77518, official records in the Office of the State Engineer.

³ File No. 77519, official records in the Office of the State Engineer.

purposes within the NW¼ NE¼ of Section 2, T.12N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 2.⁴

V.

Applications 77517, 77518, 77519 and 77520 were timely protested by the U.S. Department of Interior, Bureau of Land Management (BLM) on the following grounds:^{1,2,3,4}

For Application 77517: 1). Southern Nevada Water Authority or any other private entity has no jurisdiction or ownership over either the wildlife or public lands which the wildlife occupies. The Nevada Department of Wildlife and the Bureau of Land Management (BLM) exclusively own and manage the wildlife and public lands, respectively, and 2). In order to draw water from a well owned by the BLM, a cooperative range improvement agreement must exist between the BLM and SNWA covering the water source in question; no such agreement exists. BLM will not authorize SNWA to draw water from the BLM well.

For Application 77518: In order to draw water from a well owned by the Bureau of Land Management (BLM), a cooperative range improvement agreement must exist between the BLM and SNWA covering the water source in question; no such agreement exists. BLM will not authorize SNWA to draw water from the BLM well.

For Applications 77519 and 77520: 1). In order to draw water from a well owned by the Bureau of Land Management (BLM), a cooperative range improvement agreement must exist between the BLM and SNWA covering the water source in question; no such agreement exists. BLM will not authorize SNWA to draw water from the BLM well and, 2). The BLM has an application dated 15 September, 2008 for permission to appropriate water in the amount of 0.015 cfs from the same BLM controlled well from which SNWA, with its later application date is also requesting water. SNWA's requested amount in addition to BLM's requested amount would exceed the capacity for the well based on flow measured by BLM.

VI.

Applications 77517, 77518, 77519 and 77520 were timely protested by the Nevada Department of Wildlife (NDOW) on the following grounds:^{1,2,3,4}

Use or diversion of waters which fund the Shoshone Pond artesian complex could negatively affect 2 species of native fish, one of which is endangered (Pahrump pool fish) and the other which is listed as state sensitive (relict dace). Additionally, NDOW and BLM maintain existing

⁴ File No. 77520, official records in the Office of the State Engineer.

water rights at Shoshone Pond to benefit these 2 fish species. SNWA has filed on top of these existing rights.

FINDINGS OF FACT

I.

Nevada Revised Statutes § 533.365(3) 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 Office of the State Engineer to evaluate the merits of Applications 77517, 77518, 77519 and 77520 and a hearing is not necessary.

II.

Prior to the approval of a water right application, it must be determined that whether approval of the applications will conflict with existing water rights. The applications state that the proposed works consist of existing ground-water wells. The well locations are listed on the supporting map as pod(1), pod(2) and pod(3), from north to south.⁵ The Applicant has filed Applications 77517 and 77518 on pod(2), Application 77519 on pod(3), and Application 77520 on pod(1). A review of records on file in the Office of the State Engineer indicates that there may be up to four existing wells within the described area listed in Division records as Shoshone Well #1, Shoshone Well #2, Shoshone Well #3 and Shoshone Well #4.⁶ Although the surveys locating the wells appear to differ slightly, it is apparent that pod(1), pod(2) and pod(3) correspond to Shoshone Well #4, Shoshone Well #2 and Shoshone Well #1, respectively.

A review of records on file in the Office of the State Engineer confirms that Protestant BLM has existing water rights on Shoshone Well #1 and Shoshone Well #2; Permits 60086 and 77384, respectively. In addition, Protestant NDOW has an existing water right also on Shoshone Well #2; Permit 27768 Certificate 8979. No active water rights could be located at Shoshone Well #4.⁷

The State Engineer finds that the approval of additional appropriations of water from Shoshone Well #1 and Shoshone Well #2 would conflict with the Protestants' existing water rights.

⁵ Application Map No. 77517, official records in the Office of the State Engineer.

⁶ Application Map No. 59767, official records in the Office of the State Engineer.

⁷ Nevada Division of Water Resources Water Rights Database, *Special Hydrographic Abstract*, May 7, 2009, official records in the Office of the State Engineer.

III.

Prior to the approval of a water right application, it must be determined that there is a reasonable expectation that the water requested for appropriation will be placed to beneficial use. Under Item #8 of the applications, *Description of proposed works*, the applications state that the Applicant will make improvement to existing wells, drainage area and pond area. A review of land status maps on file in the Office of the State Engineer shows the proposed points of diversion and places of use are public land managed by the BLM and are inclusive of the Shoshone Ponds Natural Area.

In the late 1960s, the Pahrump poolfish (aka killifish) could be found in their only known natural habitat; Manse Spring in Pahrump Valley, Nevada. Due to local ground-water pumping the spring was in decline. In anticipation of the spring drying up, three separate refuge areas were selected. The Shoshone Ponds Natural Area was one of the three areas selected as a BLM native fish sanctuary in 1969. The site was selected due to the remote nature of the area, the ability to access the area by vehicle and the water quality. In 1972, the sanctuary was constructed and included three small pools that are fenced to exclude livestock, the drilling of wells to supply the pools with warm water and the lining of the pools with tiles to prevent infiltration of cool water. Two of the ponds were stocked with the Pahrump poolfish, an endangered species, and the third pond contains the relict dace, a species of fish listed as sensitive.⁸

Protestant BLM has stated in its protest that the Applicant has not entered into an agreement with the BLM to use any of the wells within the complex and that the BLM will not authorize the Applicant to draw water from their wells.

The State Engineer finds that the Applicant does not own or control the proposed places of use or points of diversion and does not have the authority to make improvements to wells it does not own or to make improvements to the public land. The State Engineer finds that to grant these permits would interfere with the operation of the Shoshone Ponds Natural Area, impair the Pahrump Killifish Recovery Plan and conflict with existing water rights.

⁸ Shawn Goodchild, *Witness Report: Pahrump Poolfish and Shoshone Ponds*, United States Department of the Interior, Fish and Wildlife Service, a report pre-filed as Exhibit No. 2063 for the Spring Valley Administrative Hearing before the State Engineer, September 11-25, 2006, official record 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.⁹

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 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.

Applications 77517, 77518, 77519 and 77520 request appropriations from existing wells located upon public land that is currently being utilized for the protection of an endangered species. Protests submitted by the lawfully recognized stewards of the land and wildlife pointedly indicate they will not authorize access or use of the existing wells. The absence of the land steward's consent to the Applicant's access and development of the water sought under these applications eliminates the expectation that the water will be put to beneficial use. The State Engineer concludes that under these circumstances, the approval of the applications would conflict with the Protestants' existing water rights and threaten to prove detrimental to the public interest.

IV.

The wells and ponds at the Shoshone Ponds Natural Area were constructed by the BLM to help preserve the endangered Pahrump poolfish. The State Engineer concludes that the approval of the applications on top of the existing uses would conflict with the Protestants' existing water rights and threaten to prove detrimental to the public interest.

⁹ NRS chapters 533 and 534.

¹⁰ NRS § 533.370(5).

RULING

The protests to the applications are upheld in part and Applications 77517, 77518, 77519 and 77520 are hereby denied on the grounds that their approval would conflict with existing rights and threaten to prove detrimental to the public interest. No ruling is made on the remaining protest issues.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 27th day of
July, 2011.