

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

IN THE MATTER OF APPLICATION )  
81072 FILED TO APPROPRIATE AND )  
APPLICATIONS 81908 AND 81909 )  
FILED TO CHANGE THE PUBLIC )  
WATERS OF BASTIAN CREEK )  
WITHIN THE SPRING VALLEY )  
HYDROGRAPHIC BASIN (184), )  
WHITE PINE COUNTY, NEVADA. )

**RULING**  
**#6219**

**GENERAL**

**I.**

Application 81072 was filed on August 12, 2011, by the Southern Nevada Water Authority to appropriate 0.96 cubic feet per second (cfs) not to exceed 695 acre-feet annually (afa), of water from Bastian Creek. The proposed manner of use is described as being for the irrigation of 231.67 acres from January 1 to December 31 of each year. The proposed place of use is described as being located within the S $\frac{1}{2}$  S $\frac{1}{2}$ , S $\frac{1}{2}$  N $\frac{1}{2}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 17, SE $\frac{1}{4}$  of Section 18, W $\frac{1}{2}$ , W $\frac{1}{2}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 19, N $\frac{1}{2}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 20, T.15N., R.67E., M.D.B. &M., and NE $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$ , and a portion of the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, T.15N., R.66E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 23, T.15N., R.66E., M.D.B.&M.<sup>1</sup>

**II.**

Application 81908 was filed on May 17, 2012, by the Southern Nevada Water Authority to change the point of diversion and place of use of 4.0 cfs, not to exceed 256.76 afa, of the waters of Bastian Creek heretofore appropriated under Permit 10703, Certificate 8088. The proposed manner of use is described as being for the irrigation of 64.19 acres and a secondary domestic use. The proposed period of use will be from January 1 to December 31 of each year. The proposed place of use is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 24, T.15N. R.66E., M.D.B.&M.<sup>2</sup>

<sup>1</sup> File No. 81072, official records in the Office of the State Engineer.

<sup>2</sup> File No. 81908, official records in the Office of the State Engineer.

### III.

Application 81909 was filed on May 17, 2012, by the Southern Nevada Water Authority to change the point of diversion and place of use of 171.4 afa of the waters of Bastian Creek heretofore appropriated under Proof of Appropriation V-01216. The proposed manner and place of use is described as being for the irrigation of 42.85 acres within the SW¼ NE¼, NW¼ SE¼ of Section 24, T.15N., R.66E., M.D.B.&M. from January 1 to December 31 of each year. The proposed point of diversion is described as being located within the SE¼ NE¼ of Section 23, T.15N., R.66E., M.D.B.&M.<sup>3</sup>

### IV.

Application 81072 was timely protested by the Ely Shoshone Tribe, Confederated Tribes of the Goshute Reservation, Duckwater Shoshone Tribe, Great Basin Water Network, White Pine County District Attorney's Office and United States Department of the Interior, Bureau of Land Management on numerous grounds, including but not limited to the following briefly summarized issues:<sup>1</sup>

1. Proposed use is uncertain.
2. Conflicts with existing rights associated with,
  - a. Domestic wells, Tribal reserved water rights.
3. Threatens to prove detrimental to the public interest,
  - a. Economic issues, environmental impacts, impacts to cultural resources and tribal interests.
4. No unappropriated water available.
5. Violate Federal and State laws.

### V.

Application 81908 and 81909 were timely protested by White Pine County on the following grounds:<sup>2, 3</sup>

Application for Permit 10703 requires a substantial weir be installed and maintained to facilitate the measurement of water as a condition of approval. A field investigation must be conducted to prove such improvements still exist. The flow of the stream has been diverted around a storage reservoir that is not shown on the map and appears to have dried out that reservoir. The map submitted per application #10703 designates the continuous flow of Bastian (Bastian) Creek downstream to meet the requirements of NRS 533.060(1), 533.080(1) and 533.100(3)(a). Per current conditions, creek flow has been diverted entirely into a 12" concrete pipe with no further flow allowed downstream. No new map was provided

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<sup>3</sup> File No. 81909, official records in the Office of the State Engineer.

that clearly distinguishes between past improvements, existing storage reservoirs dried up and requested improvements to be approved, while showing the creek to continue its flow downstream to support wildlife habitation and natural vegetation growth.

Secondly, upon information and belief, the proposed change in place of use and point of diversion is designed to facilitate and support SNWA's planned groundwater development and inter-basin transfer project and there is no genuine need for the water at the move-to location or reason for a change in point of diversion. The proposed groundwater development project would conflict with existing rights, would be detrimental to the public interest, would be environmentally unsound, and would unduly limit economic growth and development in the basin of origin.

### **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 Applications 81072, 81908 and 81909 and their associated protests and a hearing in this matter is not necessary.

#### **II.**

Before an application to appropriate 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 searchable water rights database to allow research of existing water rights. A recent review of this database identified a group of active existing or claimed water rights on Bastian Creek.<sup>4</sup>

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<sup>4</sup> Nevada Division of Water Resources Water Rights Database, March 4, 2013, official records in the Office of the State Engineer.

A summary of the committed resource of Bastian Creek is presented below:

Permit/Proof	Status	Div. cfs	Use	Period of use	Duty acre-foot	Units	Current owner of Record	Units
V-01216	Vst. Claim	0.5	Irr	1/1-12/31	171.4	afa	Southern Nevada Water Authority	42.85 acres
V-02078	Vst. Claim	0.05	Stk	1/1-12/31	11.2	afa	Adams-McGill Company	100-500 cattle
10703	Cer.	4.0	Irr. & Dom	1/1-12/31	256.76	afa	Southern Nevada Water Authority	64.19 acres
Sum		4.55			439.36	afa		

The State Engineer finds that 4.55 cfs of the flow of Bastian Creek is committed under existing water rights, but their duty of water is limited to 439.36 afa.

### III.

The amount of unappropriated water, if any, that is present in Bastian Creek can be calculated through a simple equation, where the stream's committed resource is subtracted from its estimated flow. Having assigned a value of 4.55 cfs to the committed resource, the second variable that must be determined is the stream-flow.

The SNWA has filed numerous water right applications within the Spring Valley Hydrographic Basin for the appropriation and eventual exportation of groundwater. In accordance with NRS § 533.364, if the amount of groundwater that is proposed for transfer outside of the host groundwater basin exceeds 250 afa, an inventory of the groundwater basin's water resources must be conducted. Since these other SNWA applications surpassed this threshold value, an inventory of the Spring Valley Basin was conducted and *The Spring Valley Hydrographic Basin 10-184 NRS § 533.364 Inventory*<sup>5</sup> (Inventory) was published in August 2011.

One goal of the inventory is to provide a snap-shot in time of the water availability within the groundwater basin, including its surface water sources. Contained within the Inventory is a record of stream-flow measurements that were taken by the SNWA between July 15, 1998, and November 8, 2010, for measuring points established on Bastian Creek. On numerous occasions, Bastian Creek's stream-flow was measured and recorded, from

<sup>5</sup> Spring Valley Hydrographic Basin Inventory, 2011, p. A-93, official records of the Office of the State Engineer.

which a long term average discharge of 1.76 cfs was derived.<sup>6</sup> Using the standard conversion factor, this flow rate equates to an annual duty of 1,274.19 acre-feet. At this level, the State Engineer finds that there is sufficient water generated by Bastian Creek on an annual basis to meet the demands of its existing water rights (439 afa), in addition to the manner of use proposed under Application 81072 (695 afa).

#### IV.

The approval of Permit 10703, Certificate 8088 in 1942 carried with it the requirement that a substantial weir must be installed and maintained to facilitate the measurement of its water. Although this permit term was set forth over 70 years ago, it remains in effect to this day.<sup>7</sup> Contained within White Pine County's protests to Applications 81908 and 81909, is a request for a field investigation to determine the existence and current condition of the weir. A site visit by personnel from the Nevada Division of Water Resources confirmed that on May 16, 2012, the Bastian Creek weir was intact. It was also observed during the investigation that a concrete diversion box was diverting all of the flow of Bastian Creek into a conduit that delivered water to the permitted place of use.

Nevada Revised Statute § 533.060 requires that any stream-flow above the amount perfected under Permit 10703, Certificate 8088 must be allowed to continue its path downstream in the natural stream from which the appropriation is made. White Pine County alleges that in its current configuration the entire flow of Bastian Creek is diverted under Permit 10703, Certificate 8088. It appears that there are occasions when this protest issue may be valid, as witnessed on May 16, 2012. The State Engineer finds that any diversion of water allowed under Permit 10702, Certificate 8088 must be limited to its certificated diversion rate and annual duty of water.

#### V.

In addition, White Pine County states in its protest to the subject change applications that the Applicant has not provided a new map that depicts any modifications in the works of diversion or would indicate that the excess stream flow continues downstream past the proposed capture point. The State Engineer finds that this type of information is not required under the State Engineer's current water right application map guidelines.

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<sup>6</sup> Spring Valley Hydrographic Basin Inventory, 2011, pp. C-5 and C-6.

<sup>7</sup> File No. 10703, Certificate 8088, official records in the Office of the State Engineer.

## VI.

In response to White Pine County's remaining protest points, the State Engineer makes the following findings:

1. The proposed changes requested under Applications 81908 and 81909 do not appear related to the SNWA's proposed Spring Valley groundwater exportation project.
2. Regarding the Applicant's need for the transfers, this matter will be answered in time, by the degree of beneficial use that the permittee is able to achieve should the applications be approved.
3. Further allegations regarding SNWA's groundwater development project have no bearing as to the issues of unappropriated water, adverse impacts on existing rights and the public interest as they relate specifically to Bastian Creek. The State Engineer finds that transfers of existing water rights that are considered to be in good standing, to new points of diversion and places of use that remain in the original watershed will not unduly limit economic growth and development in Spring Valley nor prove to be environmentally unsound.

## VII.

In response to the protest filed under Application 81072, the State Engineer makes the following findings.

1. The proposed manner and place of use is clearly stated upon the application, and contradicts the Protestant's claim that the proposed use is unclear.
2. Application 81072 proposes an additional appropriation of surplus surface water from Bastian Creek. Regarding possible conflicts with domestic wells and claims of reserved rights, the State Engineer indicates that there are only four wells of record located within T.15N., R.66E., M.D.B.&M. In addition, there are no claims of reserved water rights filed within the Bastian Creek drainage.
3. The protests to the subject change applications purport that their approval would threaten to prove detrimental to the public interest, more specifically, economic issues, environmental impacts, impacts to cultural resources and tribal interests. In response, the State Engineer finds that an additional appropriation of surplus water for agricultural purposes within the original

watershed will not unduly limit economic growth and development in Spring Valley nor prove to be environmentally unsound.

4. It is also contended that the approval of Application 81072 would violate Federal and State laws. The approval of Application 81072 has been found to comply with the relevant provisions of the Nevada Revised Statutes.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>8</sup>

#### II.

The State Engineer is prohibited by law from granting a permit under an application that requests to appropriate public waters where:<sup>9</sup>

- 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 upon a reliable set of flow measurements, it has been determined that the estimated average annual flow of Bastian Creek, substantially exceeds the amount of water required to meet the demands of its existing water rights. The State Engineer concludes that there is unappropriated water in the stream system in sufficient quantity to meet the manner of use proposed under Application 81072.

#### IV.

Applications 81908 and 81909 request transfers of existing surface water rights that are considered to be in good standing, and do not request an additional appropriation from Bastian Creek. The State Engineer concludes that the issue of unappropriated water is not relevant to said applications.

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<sup>8</sup> NRS Chapter 533.

<sup>9</sup> NRS § 533.370(2).

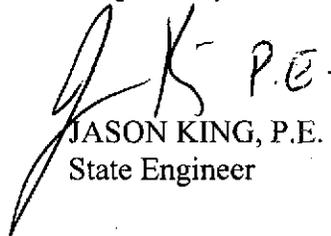
V.

The State Engineer concludes that the approval of Applications 81908, 81909 and 81072 would not conflict with existing rights and would not threaten to prove detrimental to the public interest.

**RULING**

The protests to Applications 81072, 81908 and 81909 are overruled and the applications are hereby approved subject to existing rights and payment of statutory fees.

Respectfully submitted,

 P.E.  
JASON KING, P.E.  
State Engineer

Dated this 28th day of  
March, 2013.