

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

IN THE MATTER OF APPLICATION 81061)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF SWALLOW SPRINGS WITHIN)
THE SPRING VALLEY HYDROGRAPHIC)
BASIN (184), WHITE PINE COUNTY, NEVADA.)

RULING
#6220

GENERAL

I.

Application 81061 was filed on August 12, 2011, by the Southern Nevada Water Authority (SNWA) to appropriate 0.8 cubic feet per second (cfs), not to exceed 578.34 acre-feet annually (afa), of water from Swallow Springs. The proposed manner of use is described as being for the irrigation of 144.5 acres from January 1 to December 31 of each year. The proposed place of use is described as being located within the S½ NW¼, NE¼ SW¼ of Section 5, S½ N½ of Section 6, T.11N. R.68E., M.D.B.&M. The point of diversion is described as being located within the NE¼ SW¼ of Section 5, T.11N., R.68E., M.D.B.&M.¹

II.

Application 81061 was timely protested by Great Basin Water Network, Ely Shoshone Tribe, Confederated Tribes of the Goshute Reservation and the Duckwater Shoshone Tribe. There are numerous protest issues, including but not limited to, the following briefly summarized issues:

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.

¹ File No. 81061, official records in the Office of the State Engineer.

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 Application 81061 and the associated protests and a hearing is not necessary.

II.

Before an application to appropriate from a surface water source can be considered for approval, it must be determined in part 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 source 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 single existing water right on Swallow Springs. The sole active right on Swallow Springs is Permit 27902, Certificate 9744, which was perfected for 0.46 cfs or 66 afa for the irrigation of 16.5 acres from January 1st through December 31st of each year and is currently owned by SNWA and is senior in priority to Application 81061. The State Engineer finds Permit 27902, Certificate 9744 must be satisfied prior to the diversion of any water for Application 81061 as to not conflict with the senior right.

The State Engineer finds Application 81061 requests an additional appropriation of surface water from Swallow Springs for irrigation purposes.

The State Engineer finds that Swallow Springs consists primarily of two springs that emerge from the same spring area. The State Engineer finds that the proposed point of diversion of Swallow Springs is downstream from the confluence of Swallow Springs North and South and converge within the NE¼ SW¼ of Section 5, T.11N., R.68E., M.D.B.&M.

III.

Spring flow records submitted to the Office of the State Engineer, collected and submitted by SNWA from February 2007 through October 2012, indicate that the flow produced by the springs reasonably exceeds the current permitted 0.44 cfs. The average recorded spring flow is approximately 0.9 cfs and with a peak flow near 1.12 cfs. The State Engineer finds that based upon the spring flow measurements submitted by SNWA that there is unappropriated water within the system that could be placed to beneficial use; however, noting that these flows may not always be available during the irrigation season and makes no guaranty to the availability of water.

The State Engineer finds there is water available for appropriation for the manner of use requested by Application 81061.

Additional spring flow data is available from *The Spring Valley Hydrographic Basin Inventory*² (Inventory), which estimates average annual spring flow for Swallow Springs, when expanded equates to an annual spring flow duty of 644 acre-feet. The Inventory is considered a snap shot in time as an estimate and makes no guarantee as to future water availability. The State Engineer finds that in using the Estimated Average Annual Discharge duty of 644 afa minus the 66 afa committed under Permit 27902, Certificate 9744 leaves 578 afa to be available for appropriation. The State Engineer finds that the water available for appropriation at a duty of 4.0 acre-feet per acre, would irrigate 144.5 acres of land.

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 a permit under a change application that requests to appropriate 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 Spring Valley Hydrographic Basin Inventory, 2011, p. A-20, official records in the Office of the State Engineer.

³ NRS Chapter 533.

⁴ NRS § 533.370(5).

- 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.

The State Engineer concludes that during the period of record that Swallow Springs consistently produced an average flow of 0.9 cfs, which is sufficient to satisfy the diversion rate of 0.46 cfs perfected under Permit 27902, Certificate 9744. The State Engineer concludes that Application 81061 would be eligible to receive a reasonable diversion in excess of the requirements of the senior right, Permit 27902, Certificate 9744. The State Engineer concludes that there is unappropriated water from Swallow Springs in the amount of 578 afa and that the approval of Application 81061 would not conflict with existing rights.

IV.

The State Engineer concludes that following the issuance of a permit under Application 81061 Swallow Springs shall be considered fully appropriated.

RULING

The protests are overruled and Application 81061 is hereby approved subject to existing rights and payment of statutory fees.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 28th day of
March , 2013.