

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

IN THE MATTER OF APPLICATION 81066 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF WHITE FIRE SPRING WITHIN )  
THE SPRING VALLEY HYDROGRAPHIC )  
BASIN (184), WHITE PINE COUNTY, NEVADA. )

**RULING**

**#6224**

**GENERAL**

**I.**

Application 81066 was filed on August 12, 2011, by the Southern Nevada Water Authority, to appropriate 0.304 cubic feet per second (cfs) of water from White Fire Spring. The proposed manner of use is described as being for irrigation of 55 acres of land from January 1 to December 31 of each year. The proposed place of use is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , portion of SW $\frac{1}{4}$  SW $\frac{1}{4}$ , portion of SE $\frac{1}{4}$  SW $\frac{1}{4}$  and SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 15, NE $\frac{1}{4}$  SW $\frac{1}{4}$ , portion of SE $\frac{1}{4}$  SW $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , portion of SW $\frac{1}{4}$  SE $\frac{1}{4}$  and portion of SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 16, NE $\frac{1}{4}$ , E $\frac{1}{2}$  NW $\frac{1}{4}$  and NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 21, SW $\frac{1}{4}$  NE $\frac{1}{4}$ , W $\frac{1}{2}$ , portion of NW $\frac{1}{4}$  NE $\frac{1}{4}$ , portion of NE $\frac{1}{4}$  SE $\frac{1}{4}$ , W $\frac{1}{2}$  SE $\frac{1}{4}$  and SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22 T.13N., R.67E. The point of diversion is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 25 T.14N., R67E., M.D.B.&M.<sup>1</sup>

**II.**

Application 81066 was timely protested by Fred Salisbury on the following grounds:<sup>1</sup>

I am the current owner of the water right to White Fire Spring. The volume of water running from this spring does not support my current needs and uses, and would not support any other demand. This spring only runs in the spring of the year, unless it is an unusually wet year. This spring does not run the quantity of water we have been allotted on most normal years. Our permit is for 0.5 C.F.S. of water. Therefore, there is no extra water to permit to another entity.

Application 81066 was timely protested by United States Department of the Interior, Bureau of Land Management on the following grounds:<sup>1</sup>

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<sup>1</sup> File No. 81066, official records in the Office of the State Engineer.

1. Applicant does not possess a right-of-way to access the POD which is situated on public land managed by BLM;
2. Approximately 0.4 miles of lotic riparian wildlife habitat are supported by White Fire Spring that would be lost by the removal of water at the POD for use approximately 5.5 miles outside its natural course. Due to loss of critical wildlife habitat in an areas [sic] where water is already used for mining operations BLM would not issue a right-of-way to the applicant to access public land; and
3. The Place of Use as described in application 81066 appears to already possess enough water via an existing irrigation system of surface and groundwater to cultivate alfalfa or other feed crops given the accepted rate of 4 AFA per acre for Spring Valley. Existing certificated rights or pending applications provide about 4.42 AFA for use at the listed POU. Applications 81060 and 81066 would add another 0.7 AFA per acre to the same plot of land for a potential total of 5.12 AFA per acre of irrigated land.

Application 81066 was timely protested by Ely Shoshone Tribe, Confederated Tribes of the Goshute Reservation and Duckwater Shoshone Tribe on numerous grounds, including but not limited to, the following briefly summarized issues:<sup>1</sup>

1. The proposed use of the water is uncertain.
2. There is insufficient amount of water in the proposed source of supply.
3. The application and proposed use would conflict with existing water rights and impermissibly diminish the sources of and protectable interests in domestic wells.
4. The appropriation and proposed use would be detrimental to the public interest on environmental grounds, environmentally unsound and unsustainable.
5. The appropriation and proposed use would have unduly negative impacts on cultural, historic, and religious resources which would harm the public interest.
6. The appropriation and proposed use would violate federal and state laws that protect cultural, religious, and historic resources.
7. The appropriation and proposed use would violate the federal government's trust responsibility to the Tribe.
8. The appropriation and proposed use would unduly injure the Tribe's sovereignty and ability to regulate its territory.

### **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 81066 and its associated protests and a hearing is not necessary.

## II.

Before an application to appropriate water 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 source in question. The Office of the State Engineer has created and maintains a water rights database to allow research of existing water rights in a relatively easy and accurate manner. A recent review of this database identified a single existing water right on White Fire Spring, as Permit 47352, Certificate 14240, with a diversion rate of 0.5 cfs and an annual duty of 43.69 acre-feet. A corrected Certificate of Appropriation was issued on April 12, 2013, after an error was found on the duty calculation for the original certificate.

The records of the Office of the State Engineer find that the record of stream flow measurements of White Fire Creek show an average of 0.3 cfs measured between 1984 and 1995.<sup>2</sup> All of the recorded measurements were made during the spring freshet, between April 14<sup>th</sup> and July 1<sup>st</sup>, which is usually the period of greatest stream flow. This gives evidence that White Fire Spring is fully appropriated.

## III.

An inventory of underground as well as surface water of the Spring Valley Hydrographic Basin was conducted and *The Spring Valley Hydrographic Basin 10-184 NRS § 533.364 Inventory* (Inventory) was published in August 2011. One requirement of the inventory is to provide a snap-shot in time of the water availability within the groundwater basin, including its surface water sources. The Inventory included White Fire Spring and the Inventory lists 208 afa (approximately 0.29 cfs) as the estimated

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<sup>2</sup> Official records in the Office of the State Engineer, Spring and Stream flow database. <http://water.nv.gov>.

average annual spring flow of White Fire Spring.<sup>3</sup> The Estimated Average Annual Discharge was calculated from the stream flow records on file submitted with the Proof of Application of Water to Beneficial Use for Permit 47352, filed on July 28, 1995, of which all were measured during the spring freshet and then annualized to arrive at 208 afa as stated in the Inventory.

The State Engineer finds the Estimated Average Annual Discharge of 208 afa to be overestimated on an annual basis and did not consider the lower stream flow outside of the spring freshet and is significantly less as evidenced in the submitted protest of Salisbury.

The State Engineer finds no depiction of White Fire Spring on the appropriate United States Geological Survey 7½-minute map, which gives evidence that White Fire Spring may be an ephemeral spring that does not flow perennially.

The State Engineer finds that the water appropriated under Permit 47352, Corrected Certificate 14240, issued for 0.5 cfs and 43.69 afa, is the senior most right on White Fire Spring and must be fulfilled prior to the diversion of water for any junior rights.

The State Engineer finds that an additional appropriation of water from White Fire Spring would conflict with Permit 47352, Corrected Certificate 14240.

Based on the record of stream flow data and the existing water right on the source, the State Engineer finds White Fire Spring to be fully appropriated and that no additional appropriation of water can be considered from this source.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>4</sup>

#### II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>5</sup>

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<sup>3</sup> *The Spring Valley Hydrographic Basin Inventory*, 2011, p. A25.

<sup>4</sup> NRS Chapter 533.

<sup>5</sup> NRS § 533.370(2).

- 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.

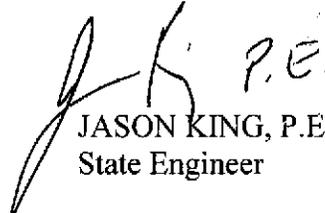
**III.**

The State Engineer concludes that from the stream flow measurements of White Fire Creek, and the committed resource, Permit 47352, Corrected Certificate 14240, that White Fire Spring is fully appropriated and no additional water is available for appropriation. The State Engineer concludes that approval of Application 81066 would conflict with existing water rights and therefore, threaten to prove detrimental to the public interest.

**RULING**

The protests to Application 81066 are upheld in part and Application 81066 is hereby denied on the grounds that there is no unappropriated water at the source and its approval would conflict with existing rights and threaten to prove detrimental to the public interest. No ruling is made on the merits of the remaining protest issues.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 22nd day of  
April, 2013.