

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

IN THE MATTER OF APPLICATIONS 79506,)
79507, 79508, 81057 AND 82246 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
UNNAMED SPRINGS 1, 2, 3 AND KEEGAN)
SPRING(S) WITHIN THE SPRING VALLEY)
HYDROGRAPHIC BASIN (184), WHITE PINE)
COUNTY, NEVADA.)

RULING

#6233

GENERAL

I.

Application 79506 was filed on February 11, 2010, by the Southern Nevada Water Authority to appropriate 0.25 cubic feet per second (cfs) of the waters of Unnamed Spring No. 1 for irrigation of not more than 400 acres of land from January 1st to December 31st of each year. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T.18N., R.66E., M.D.B.&M. The proposed place of use is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, and the NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, all in T.18N., R.66E., and the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.18N., R.67E., M.D.B.&M.¹

II.

Application 79507 was filed on February 11, 2010, by the Southern Nevada Water Authority to appropriate 0.25 cfs of the waters of Unnamed Spring No. 2 for irrigation of not more than 400 acres of land from January 1st to December 31st of each year. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T.18N., R.66E., M.D.B.&M. The proposed place of use is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, all in T.18N., R.66E., SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.18N., R.67E., M.D.B.&M.²

¹ File No. 79506, official records in the Office of the State Engineer.

² File No. 79507, official records in the Office of the State Engineer.

III.

Application 79508 was filed on February 11, 2010, by the Southern Nevada Water Authority to appropriate 0.25 cfs of the waters of Unnamed Spring No. 3 for irrigation of not more than 400 acres from January 1st to December 31st of each year. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T.18N., R.66E., M.D.B.&M. The proposed place of use is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, and the NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, all in T.18N., R.66E., and the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.18N., R.67E., M.D.B.&M.³

IV.

Application 81057 was filed on August 11, 2011, by the Southern Nevada Water Authority to appropriate 0.34 cfs, not to exceed 245.43 acre-feet annually (afa), of the waters of Keegan Spring for irrigation of 62 acres of land from January 1st to December 31st of each year. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T.18N., R.66E., M.D.B.&M. The proposed place of use is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, and the NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, all in T.18N., R.66E., and the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.18N., R.67E., M.D.B.&M.⁴

V.

Application 82246 was filed on October 30, 2012, by the Southern Nevada Water Authority to appropriate 0.34 cfs, not to exceed 246.2 afa, of the waters of Keegan Springs for wildlife from January 1st to December 31st of each year. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T.18N., R.66E., M.D.B.&M. The proposed place of use is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.18N., R.66E., and the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.18N., R.67E., M.D.B.&M.⁵

³ File No. 79508, official records in the Office of the State Engineer.

⁴ File No. 81057, official records in the Office of the State Engineer.

⁵ File No. 82246, official records in the Office of the State Engineer.

VI.

Applications 79506, 79507 and 79508 were timely protested by Great Basin Water Network, The Confederated Tribes of the Goshute Reservation, White Pine County, Henry Volger, IV, Center for Biological Diversity, The Ely Shoshone Tribe, U.S. Fish and Wildlife Service and The Long Now Foundation.^{1,2,3} These applications were protested on numerous grounds, including but not limited to, the following briefly summarized issues:

1. There is not a sufficient amount of water in the proposed source of supply.
2. The applications and proposed use would conflict with existing water rights and impermissibly diminish the sources of and protectable interests in domestic wells.
3. The applications and proposed export of water would be detrimental to the public on environmental grounds and would be environmentally unsound.
4. The appropriation and proposed export of water would have an adverse effect on wildlife.
5. The appropriation and export of water would be detrimental to the public interest on economic grounds and limit future growth in the basin.
6. The need for an interbasin transfer of water is not justified and is harmful to the basins of origin as well as the public interest.
7. The applications and proposed use would have detrimental impacts on cultural, historic, religious, traditional, aboriginal and ancestral lands and sites and would harm the public interest.
8. The applications would violate federal laws.
9. The applicants have not executed a proper conservation plan.
10. The application and proposed use is not an appropriate long-term use of the state of Nevada's water.

VII.

Application 81057 was timely protested by Great Basin Water Network, The Ely Shoshone Tribe, The Confederated Tribes of the Goshute Reservation and The Duckwater Shoshone Tribe.⁴ The application was protested on numerous grounds, including but not limited to, the following briefly summarized issues:

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 would impermissibly diminish the sources of and protectable interests in domestic wells.
4. The appropriation and proposed use would be detrimental to the public on environmental grounds and would be environmentally unsound.
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 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.

VIII.

Application 82246 was timely protested by White Pine County on grounds that by Nevada Revised Statute § 501.181(3)(c) the Nevada Department of Wildlife's (NDOW) duties include managing wildlife and that Southern Nevada Water Authority (SNWA) has not collaborated with NDOW to manage wildlife.⁵

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 79506, 79507, 79508, 81057 and 82246 and their associated protests, and a hearing is not necessary.

II.

A review of the records in the Office of the State Engineer was conducted to determine if there are existing water rights on this spring system. This review identified three active permits, being Permits 55363, 55364 and 55365, which are held by the SNWA. The records also reveal that the sources, requested diversions, duties, manners of use, points of diversion, places of use and periods of use under Permits 55363, 55364 and 55365 match those of Applications 79506, 79507 and 79508, respectively. The point of diversion, place and manner of use under Permit 55365 also matches the point of diversion, place and manner of use under Application 81057. Permits 55363, 55364 and 55365 were approved by the State Engineer on November 24, 2008, each for 0.25 cfs and with a total combined duty of 160.0 afa.

Permits 55363, 55364 and 55365 were approved based upon the conclusions derived from Field Investigation No. 1019, which was conducted on July 31, 2001.⁶ That field investigation found that the first three springs under consideration here are comprised of the

⁶ Report of Field Investigation No. 1019, official records in the Office of the State Engineer.

combined flows of the three springs that converge into a single unlined ditch. The combined measured flow of the three springs at that time was approximately 100 gallons per minute, which equates to approximately 0.22 cfs.

Spring flow information submitted by SNWA, recorded between August 2007 and May 2013, indicates that flows averaged 0.58 cfs and periodically peak near 1.2 cfs for brief intervals during the spring freshet. Field Investigation No. 1177 was conducted on May 8, 2013,⁷ and found that the total flow of Unnamed Springs 1, 2, 3, and Keegan Spring was 0.52 cfs, which was measured at the concrete Parshall Flume located at the proposed point of diversion of Application 82246.

The State Engineer finds from the spring flow records that water is available for appropriation from these sources. However, it must be recognized additional flow will not always be available. The State Engineer finds that if approved, Applications 79506, 79507, 79508 and 81057, will not conflict with existing rights as they are junior in priority to Permits 55363, 55364 and 55365, and water can only be appropriated under any permits granted pursuant to these applications when the senior rights are satisfied, water is actually available, and the senior rights are held by the Applicant.

III.

The protests to Applications 79506, 79507, 79508 and 81057 assert that the use of the water will conflict with protectable interests in existing domestic wells. The State Engineer finds that there are no domestic wells within one mile of the proposed points of diversion and the applications were filed to appropriate surface water sources and will not conflict with existing domestic wells using groundwater.

IV.

The State Engineer finds that the protest issues listed as Items 3 through 6, 9 and 10 filed under Applications 79506, 79507 and 79508 primarily concern the criteria for considering an interbasin transfer of groundwater related to SNWA's Groundwater Development Project to export groundwater out of the Spring Valley Hydrographic Basin. The State Engineer finds that Applications 79506, 79507 and 79508 request appropriations from surface water sources, not groundwater sources, they are not for the interbasin export of groundwater, and that the water will be placed to beneficial use for irrigation purposes on land that has been historically irrigated.

⁷ Report of Field Investigation No. 1177, official records in the Office of the State Engineer.

The State Engineer finds the appropriations requested under Applications 79506, 79507 and 79508 are not for export out of the Spring Valley Hydrographic Basin; therefore, the protest grounds lack merit.

V.

Protest Items 7 and 8 under Applications 79506, 79507 and 79508 discuss impacts on tribal interests and assert that the applications will violate federal laws. Items 4 through 8 under the protests to Application 81057 assert that the proposed use of the water will be detrimental to the public interests on environmental, cultural, historic and religious resource grounds, would violate federal laws that protect cultural, religious and historic resources, would violate the federal government's trust to the Tribe and would unduly injure the Tribe's sovereignty. The State Engineer finds from the Bureau of Land Management's 1:100,000 Ely Surface Management Map that the proposed points of diversion and places of use under Application 81057 are on privately held land, not public or Tribal lands; therefore, the protest grounds lack merit.

The State Engineer finds that NRS § 533.365 provides that a protest must set forth with reasonable certainty the grounds of the protest, which shall be verified by the affidavit of the protestant, his agent or attorney. The State Engineer finds that merely asserting that the applications will violate federal laws without additional specifics does not set forth the protest ground with reasonable certainty and it is hereby dismissed.

VI.

The protests to Application 81057 state that the use of the water is uncertain. The State Engineer finds little merit in this protest ground as the proposed manner of use is specifically identified in the application as irrigation and irrigation use is a certain and commonly accepted use for water in Nevada.

VII.

Application 82246 was filed to appropriate water from Keegan Springs for wildlife purposes. Nevada Revised Statute § 533.367 requires that before a person may obtain a right to the use of water from a spring or water which has seeped to the surface of the ground, the person must ensure that wildlife which customarily uses the water will have access to it. The State Engineer finds that Permits 55363, 55364 and 55365 include a permit term that the permits were issued subject to the condition that the permittee must ensure that wildlife which has customarily

used such water will have access to the water under NRS § 533.367. Additionally, the State Engineer finds that the spring system is fully appropriated and no additional water is available to appropriate. No ruling is made on the merits of White Pine County's protest issue.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate water where:⁹

- 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 0.25 cfs of water is available for appropriation under Applications 79506, 79507, and 79508 with a total combined duty of 160.0 afa.

The State Engineer concludes that 0.08 cfs of water is available for appropriation under Application 81057 with a duty of 57.92 afa.

IV.

The State Engineer concludes that with the approval of Applications 79506, 79507, 79508 and 81057 this spring system will be fully appropriated and the full diversion rates and duties are limited to the amount of water actually produced by the springs.

V.

The State Engineer concludes that Application 82246 identifies wildlife as the proposed manner of use. Additionally, the State Engineer has concluded that the spring system is fully appropriated with the approval of Applications 79506, 79507, 79508 and 81057 and no additional water is available to appropriate under Application 82246. Finally, the State Engineer

⁸ NRS Chapter 533.

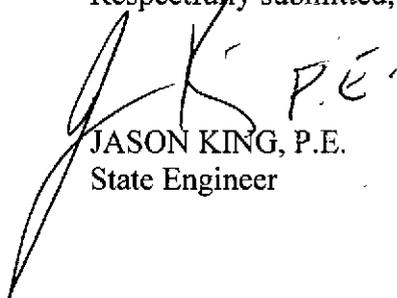
⁹ NRS § 533.370(2).

concludes that the wildlife is sufficiently provided for under the terms of Permits 55363, 55364 and 55365 and no additional water is necessary to be appropriated for wildlife.

RULING

The protests to Applications 79506, 79507, 79508 and 81057 are hereby overruled and Applications 79506, 79507, 79508 and 81057 are approved subject to existing rights and payment of the statutory permit fees. Application 82246 is hereby denied on grounds that no water is available for appropriation and the proposed manner of use is already provided for under Nevada water law and the terms of existing water right permits.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 27th day of
August, 2013.