

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

IN THE MATTER OF APPLICATION )  
81065 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF NEGRO ABE )  
CREEK WITHIN THE SPRING VALLEY )  
HYDROGRAPHIC BASIN (184), WHITE )  
PINE COUNTY, NEVADA. )

**RULING**

**#6234**

**GENERAL**

**I.**

Application 81065 was filed on August 12, 2011, by the Southern Nevada Water Authority to appropriate 0.164 cubic feet per second or 119 acre-feet annually for the irrigation of 29.75 acres of land from January 1<sup>st</sup> to December 31<sup>st</sup> of each year. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 29 T.21N., R.66E., M.D.B.&M. The proposed place of use is described as being located within the NW $\frac{1}{4}$  of Section 9, T.21N., R.66E., M.D.B.&M.<sup>1</sup>

**II.**

Application 81065 was timely protested by Kim G. Bundy on the grounds that there is insufficient water to support the existing water right on the source.

**III.**

Application 81065 was timely protested by Henry C. Vogler IV on numerous grounds summarized below:

1. Detrimental to existing water rights.
2. Detrimental to the grazing rights from the Bureau of Land Management.
3. Detrimental to the surface waters and native vegetation.
4. Detrimental to native animal species.
5. Detrimental to domestic animals and ranching.
6. Amount of water applied for is excessive for crops other than alfalfa.
7. Will interfere with the management of public lands.

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<sup>1</sup> File No. 81065, official records in the Office of the State Engineer.

#### IV.

Application 81065 was timely protested by the Ely Shoshone Tribe, the Confederated Tribe of the Goshute and the Duckwater Shoshone Tribe on numerous grounds as summarized below:

1. The proposed use of the water is uncertain.
2. There is an insufficient amount of water in the proposed source of supply.
3. The application and proposed use would conflict with existing water rights.
4. The appropriation and proposed use would be detrimental to the public interest.
5. The appropriation and proposed use would have unduly negative impacts on cultural, historical and religious resources.
6. The appropriation and proposed use would violate federal and state laws.
7. The appropriation and proposed use would violate the Federal trust responsibility to the Tribe.
8. The appropriation and proposed use would unduly injure the Tribe's sovereignty.

#### FINDINGS OF FACT

##### I.

Nevada Revised Statute § 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 information is available in the records of the Office of the State Engineer to evaluate the merits of Application 81065 and associated protests and a hearing is not necessary.

##### II.

A field investigation was conducted by staff of the Office of the State Engineer on May 6, 2013. The findings of the field investigation were that the streambed of Negro Abe Creek was dry at the point of diversion described in Application 81065 and that there was no evidence of any recent stream flow.<sup>2</sup>

The Office of the State Engineer requested stream flow data from the Applicant in a certified letter dated May 31, 2013. The Applicant responded in a letter received by the Office of the State Engineer on June 28, 2013, with a spread sheet attached. For Negro

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<sup>2</sup> Report of Field Investigation No. 1176, official records in the Office of the State Engineer.

Abe Creek, the entry dated "6/18/2013" showed no measurement and had the comment, "Dry no water in creek or diversion."<sup>1</sup>

An examination of the records of the State Engineer shows "0" for stream flow on October 15, 2010.<sup>3</sup>

Permit 4951, Certificate 1209, was issued September 10, 1926, for 0.0836 cfs, not to exceed 25.08 acre-feet per season for the irrigation of 8.36 acres.<sup>4</sup>

All measurements in the record since the issuance of Permit 4951, Certificate 1209 show no flow in the stream. The State Engineer finds that there is no unappropriated water at the source.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate public waters where:<sup>6</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.

The State Engineer concludes that there is no unappropriated water at the proposed source and that approval of Application 81065 would conflict with existing rights.

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<sup>3</sup> Nevada Division of Water Resources' Spring and Stream Flow Database, July 15, 2013, available on-line at <http://water.nv.gov/data/streamflow>, official records in the Office of the State Engineer.

<sup>4</sup> File No. 4951, official records in the Office of the State Engineer.

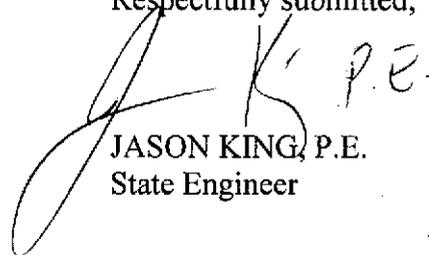
<sup>5</sup> NRS Chapter 533.

<sup>6</sup> NRS § 533.370(2).

**RULING**

The protests are upheld in part, and Application 81065 is hereby denied on the grounds that there is no unappropriated water at the proposed source and approval would conflict with existing rights. No ruling is made on the merits of the remaining protest issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. King P.E.', is written over the typed name.

JASON KING, P.E.  
State Engineer

Dated this 28th day of  
August, 2013.