

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

IN THE MATTER OF APPLICATION)
81074 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF UNNAMED)
SPRINGS AREA, SPRING VALLEY)
CREEK WITHIN THE SPRING VALLEY)
HYDROGRAPHIC BASIN (184), WHITE)
PINE COUNTY, NEVADA.)

RULING
#6249

GENERAL

I.

Application 81074 was filed on August 12, 2011, by the Southern Nevada Water Authority (SNWA), to appropriate 1.74 cubic feet per second (cfs), not to exceed 1,260 acre-feet annually, of water from Unnamed Springs Area, Spring Valley Creek for the irrigation of 315 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 $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T.22N., R.66E., M.D.B.&M. The proposed place of use is described as being located within portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 8; W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17; and the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 20, T.22N., R.66E., M.D.B.&M.¹

II.

Application 81074 was timely protested by the Ely Shoshone Tribe, the Confederated Tribes of the Goshute Reservation and the Duckwater Shoshone Tribe, on the following briefly summarized grounds:

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.

¹ File No. 81074, official records in the Office of the State Engineer.

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.

III.

Application 81074 was timely protested by Great Basin Water Network on grounds that:

1. The application would prove detrimental to the public interest by drying the spring, wetlands and riparian areas of and around Unnamed Springs Area, Spring Valley Creek and affecting wildlife dependent on this and downstream water sources and wildlife habitat.
2. The application would conflict with existing water rights either directly or by preventing natural recharge of basin-fill aquifers, reducing perennial yield and adversely affecting senior water rights, also dependent on flows from Unnamed Springs Area, Spring Valley Creek.
3. The application would be an inappropriate use for irrigation on a year round basis.
4. There is insufficient water for appropriation.

IV.

Application 81074 was timely protested by Kim G. Bundy (Clarence A. Bundy Family Trust) on grounds that the intent of Application 81074 is to tie up water with the intent to use the water to supply southern Nevada and that there is not a sufficient amount of water at the source.

V.

Application 81074 was timely protested by the White Pine County District Attorney's Office on grounds of percentages of SNWA water ownership, taxable sales, economic diversification, oil and gas leases, conflicts with existing rights, that it would be detrimental to the public interest, and would be environmentally unsound.

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 81074 and their associated protests and a hearing is not necessary.

II.

Before an application to appropriate water from a surface 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 water source in question. The Office of the State Engineer has created and maintains a water rights database to allow research of existing water rights. The State Engineer finds a review of this database located no existing surface water rights within a one and one-half mile radius of the proposed point of diversion.

III.

On November 1, 2012, the Office of the State Engineer requested SNWA to provide stream flow records of the sources described in Application 81074 to help verify the requested diversion rate of 1.74 cfs. Correspondence of July 30, 2013 from SNWA stated that "[t]he spring and Spring Valley Creek were both dry for several hundred yards both upstream and downstream from the point of diversion." The State Engineer finds that there is insufficient unappropriated water at the source of the supply.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³

- 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 water at the source and approval of Application 81074 would threaten to prove detrimental to the public interest.

RULING

Application 81074 is hereby denied on the grounds that there is insufficient water at the source and approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the remaining protest issues.

Respectfully submitted,

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

Dated this 2nd day of
January, 2014.

² NRS Chapter 533.

³ NRS § 533.370(2).