

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

IN THE MATTER OF APPLICATION)
43316 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF BONITA SPRING)
WITHIN THE BLACK ROCK DESERT)
HYDROGRAPHIC BASIN (028),)
HUMBOLDT COUNTY, NEVADA.)

RULING

5324

GENERAL

I.

Application 43316 was filed on March 11, 1981, by Bill DeLong to appropriate 0.052 cubic feet per second of water from Bonita Spring. The proposed manner of use and place of use is described on the application as being for irrigation purposes upon 40.0 acres of ground located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T.37N., R.30E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 2.¹

II.

Application 43316 was timely protested by Harris Engineering and Mining Co., on grounds that will not be considered in this ruling.¹

III.

The subject matter of this ruling contains several stream flow measurements, diversion rates and annual duties. For the purposes of this ruling, all streamflow measurements and permitted annual duties of water will be expressed to the nearest tenth (0.1) of a decimal point.

FINDINGS OF FACT

I.

A water right application, which requests a new appropriation of water from a surface source can be considered for approval only if it is determined that.²

1. There is sufficient unappropriated water at the source to satisfy the proposed manner of use.

¹ File No. 43316, official records in the Office of the State Engineer.

² NRS § 533.370.

2. The approval of the application would not adversely affect existing water rights that appropriate water from the source and its tributary.
3. The approval of the application would not conflict with protectible interests in existing domestic wells as set forth in NRS § 533.024.
4. The approval of the water right application would not threaten to prove detrimental to the public interest.

The issue of unappropriated water at the source is derived from a simple equation where the committed resource of the stream system is subtracted against the amount of water the subject source and its tributaries are capable of producing. The committed resource figure can be determined by identifying the existing active water rights on the system and summing their respective diversion rates and associated annual duties of water. An analysis of the committed resource must also include an examination of the respective priority dates assigned to each individual water right. The date of priority is derived directly from the date upon which the water right application was filed within the Office of the State Engineer. Claims of vested right that have been submitted differ from this procedure, in that their priority dates are determined through the adjudication process. Under Nevada Water Law, the water right occupying the senior priority date must be satisfied before water can be passed to a junior water right. There are exceptions to this rule, which are applied during times when the stream system is operating under low flow conditions, but the general rule is, first in time equates to first in use. The priority system must be considered in this instance, since the waters of Bonita Spring are claimed for appropriation under two certificated water right permits and a nonadjudicated claim of a federal reserved right, all of which are classified as active. Certificate 201, was issued under Permit 880 on June 20, 1914, to Walter G. Schmierer and A.D. Ramel, for stockwatering and domestic purposes, including the irrigation of 1 acre of land. This water right was perfected for 5.9 million gallons annually (mga), which equates to approximately 11.0 gallons per minute (gpm).³ The second permitted water right on the spring is represented by Permit 26115, Certificate 8288, which carries with it a priority date of May 10, 1971. Under the terms issued with this permit, 2.6 mga of water from Bonita Spring can be appropriated for stock watering purposes. Permit 26115 is currently held by Bill and Dale

³ File No. 880, official records in the Office of the State Engineer.

Delong (DeLong Ranches, Inc.) and is considered to be in good standing.⁴ Claim of reserved right, R-05083, contends that the water generated by the spring is subject to a federal reservation as a public water reserve, which assigns it a priority date of 1926.⁵ If the subject application, the certificated permitted rights and the federal claim of reserved right are placed in a queue according to their respective priority dates, Permit 880 would occupy the senior position, followed by the claim of the reserved right and Permit 26115, with Application 43316 representing the junior water right. For the purposes of this ruling, the validity of the federal government's reserved claim will not be evaluated; therefore, its associated annual duty of water will not be added into the compilation of the total committed resource. The State Engineer finds that the committed resource of Bonita Spring, represented by Permits 880 and 26115, currently exceeds 16.3 gpm.

II.

It has been determined that Application 43316 holds a junior position on Bonita Spring, which limits its appropriation of water to that portion of the flow, if any, which remains after all senior water rights have been served. The level of unappropriated water available from Bonita Spring must be determined through a record of field measurements. The partial record of flow measurements found within the Office of the State Engineer under Application 43316, was supplemented with spring flow data acquired during a June 24, 2003, site inspection conducted by personnel from the State Engineer's office. The findings and observations made during this inspection are presented within Report of Field Investigation No. 1042, which has been incorporated into the subject application file. Employing standard field techniques, it was determined that on the day of the visit, Bonita Spring was generating approximately 3.6 gallons per minute of flow, which is significantly lower than the 6.0 gpm that was measured earlier in the year by the Bureau of Land Management. Returning to the available resource/committed resource equation, this flow would be entirely consumed by the irrigation and stock water use approved respectively, under Permit 880 and Permit 26115, leaving no unappropriated water for use under any permit derived from Application 43316. Based upon a maximum measured spring flow of approximately 6.0 gpm and the level of the committed resource, which exceeds 16.0 gpm, the State

⁴ File No. 26115, official records in the Office of the State Engineer.

⁵ File No. R-05083, official records in the Office of the State Engineer.

Engineer finds that there is no unappropriated water available at the subject source to satisfy the additional 23.0 gpm of water requested by Application 43316.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁶

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁷

- 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 protectible 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 waters of Bonita Spring are currently appropriated to a level that exceeds 16.3 gpm. Recent spring flow measurements determined that this source is only capable of generating approximately 4.0-6.0 gpm. Even if the high-end flow is compared to the water demand represented by existing certificated permits, it exceeds the available surface-water resource to a degree where the State Engineer can conclude there is no unappropriated water remaining at the source in question.

IV.

The flow of Bonita Spring is fully appropriated under existing water rights. Any additional appropriations of water from this source would have to be derived from water, which under the priority system must be reserved for senior rights. The State Engineer concludes that the approval of additional water from Bonita Spring as requested by Application 43316 would conflict with existing senior rights that appropriate water from this source.

⁶ NRS chapter 533.

⁷ NRS § 533.370(3).

RULING

Application 43316 is hereby denied on the grounds that there is no unappropriated water available at the proposed source and that its approval would conflict with existing water rights that are permitted for appropriations of water from Bonita Spring. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MB/jm

Dated this 20th day of
February, 2004.