

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

IN THE MATTER OF APPLICATION)
71444 FILED TO APPROPRIATE)
PUBLIC WATER FROM A SPRING)
SOURCE WITHIN THE INDIAN)
SPRINGS VALLEY HYDROGRAPHIC)
BASIN (161), CLARK COUNTY,)
NEVADA.)

RULING

#5926

GENERAL

I.

Application 71444 was filed on July, 12, 2004, by Sari Fisher to appropriate 0.377 cubic feet per second (cfs) of water for commercial (bottled water) purposes. The proposed place of use is described as being located within the W½ Tract 48C of Section 16, T.16S., R.56E., M.D.B.&M. The proposed point of diversion is Indian Springs, which is described as being located within the W½ Tract 48C of said Section 16.¹

II.

Application 71444 was timely protested by the Brauer Living Trust on the following grounds:¹

We support the maintenance of the historic status quo with regard to use of Indian Springs (The Springs), with rights to these waters granted to the owner(s) of the property on which this naturally spring occurs. It is vital to the public interest that these waters NOT be removed from the community area. The Spring gives the community its life and even its name. Two ponds, formed by these waters have contributed to the nature of the community, to recreation for many generations, to habitat essential for migratory and resident birds, to trees that make this parched area home, to the groundwater essential to the people living here and their activities.

Problems arise with the export of these spring waters, which are made more complex when coupled with the numerous applications to take much or all of the groundwater in this area and adjacent to this community. According to information contained in the files of the Nevada Division of Water Resources, there is no groundwater available for appropriation in Basin 161. Existing senior water rights exceed the currently accepted

¹ File No. 71444, official records in the Office of the State Engineer.

perennial yield of this basin, which the State Engineer has declared is already over-allocated.

Our senior water rights, those of others, and many domestic wells in Indian Springs depend on flow from The Springs which may be adversely affected by the amount of water proposed for removal from the basin. These senior water rights and domestic wells, down-slope from The Springs would be adversely affected by decline in water availability, quality, and increased costs. Some long-time local residents tell of the spring flow being diverted for highway construction, and the subsequent drying up of some wells.

Any and all resulting environmental degradation such as –but not limited to– damage to the flow of the various springs, loss of species, loss of habitat, increased ambient temperatures, decreased diversity, increased desertification, and/or increased dust pollution is not in the public interest. Negative social and economic consequences such as loss of long established lifestyle choice, loss of historical continuity, and/or increase in economic hardships for Indian Springs residents and property owners is not in the public interest.

The protestant reserves the right to amend the subject protest to include such issues as they may develop as a result of further information and study, passage of time and/or changes in the application.

THEREFORE the Protestant requests that the application be DENIED and that an order be entered for such relief as the State Engineer deems just and proper.

FINDINGS OF FACT

I.

In a review of records on file in the Office of the State Engineer it was determined that Permit 53052 was issued on Indian Springs for 0.377 cfs of water for commercial (bottled water) purposes. The permit was issued to Sari Fisher; the same applicant for Application 71444. On January 23, 2001, Permit 53052 was cancelled for failure to comply with the terms of the permit. The State Engineer finds that Application 71444 was filed to re-establish a water right permit at Indian Springs for the same purpose as cancelled Permit 53052.

II.

Application 71444 was protested on the grounds that the approval of the application would threaten to prove detrimental to the public interest. Some of the

protest grounds are related to socio-economic impacts such as loss of long established lifestyle choice, loss of historical continuity, and/or increase in economic hardships for Indian Springs' residents and property owners. Additional protest issues include maintenance of the historic status quo with regard to use of Indian Springs, the waters should not be removed from the community area, Indian Springs gives the community its life, name and contributes to the nature of the community, and the spring provides recreation, and habitat for birds and trees.

Information contained within File No. 71444 states that the spring has been privately owned by the Fisher/Highfields since 1969 and the spring is behind closed gates with No Trespassing posted. Water has been used from the spring in the past for water bottling purposes under Permit 53052 and the Applicant believes there was no negative impact to the community as a result of past water usage.¹

Nevada water law provides for the appropriation of surface-water sources such as springs in order to place said water to beneficial use. The State Engineer's authority in the review of water right applications is limited to considerations identified in Nevada's water policy statutes. The State Engineer finds that these protest issues are not water related and are beyond the scope of the public interest criteria that is considered under NRS § 533.370.

III.

The protest states that there is no ground water available for appropriation in Basin 161 and existing senior water rights exceed the currently accepted perennial yield of this basin, which the State Engineer has declared is already over-allocated. The State Engineer finds that the application at issue is for the appropriation of surface water from a spring source not ground water.

IV.

In geology, a spring is considered a natural flow of water from the ground or from rocks, representing an outlet for the water that has accumulated in permeable rock strata underground. The occurrence of springs is closely related to the geology of an area. If an impervious layer of rock, such as a clay deposit, underlies a layer of saturated soil or rock, then a line of springs will tend to appear on a slope where the clay layer outcrops. Igneous rocks are also impervious to water, yet they are often extensively fractured, and

springs commonly appear where these fractures come to the surface. Fractures in limestone are often enlarged by the dissolving action of ground water, forming small underground channels and caves. Where these channels outcrop, springs are likely to be found. Springs are common along major faults because ground water reaches the surface along the fault plane.

The Protestant alleges that any appropriation of the spring water will affect existing ground-water rights and domestic wells in the Indian Springs community. By certified notice of July 11, 2008, the Protestant was ordered to supply additional information in support of its protest claim.¹ In response, the Protestant provided additional information in the form of a letter dated September 8, 2008,¹ and clarified this protest issue by indicating that the outflow of Indian Springs fills two ponds and that area wells are dependent upon secondary recharge from the ponds. However, no scientific evidence was provided to support the secondary recharge claim. In addition, there is no provision in Nevada Water Law that would require a surface-water user to provide secondary recharge for ground water users.

The State Engineer finds that the Protestant's claims are not supported by substantial evidence or by Nevada Water Law.

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 domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

² NRS chapter 533.

³ NRS § 533.370(5).

III.

The State Engineer concludes that the approval of Application 71444 will not conflict with existing water rights or protectable interests in domestic wells and will not threaten to prove detrimental to the public interest.

RULING

The protest to Application 71444 is overruled and the application is hereby approved subject to existing rights and the payment of the statutory permit fees.

Respectfully submitted,


TRACY TAYLOR, P.E.
F012 State Engineer

TT/TW/jm

Dated this 4th day of
February 2009