

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

IN THE MATTER OF APPLICATIONS)
81948 AND 81949 FILED TO CHANGE)
THE PLACE OF USE AND MANNER OF)
USE OF A PORTION OF THE PUBLIC)
WATERS OF SWALLOW CREEK AKA)
WATER CANYON CREEK WATER)
PREVIOUSLY APPROPRIATED UNDER)
PERMIT 3865, CERTIFICATE 1068 AND)
THE PLACE OF USE OF A PORTION OF)
WATER PREVIOUSLY APPROPRIATED)
UNDER PERMIT 27743, CERTIFICATE)
9743, WITHIN THE SPRING VALLEY)
HYDROGRAPHIC BASIN (184), WHITE)
PINE COUNTY, NEVADA.)

RULING
#6209

GENERAL

I.

Application 81948 was filed on June 6, 2012, by the Southern Nevada Water Authority to change the manner and place of use of 1.6782 cubic feet per second (cfs), not to exceed 503.46 acre-feet annually (afa) of the waters of Swallow Creek, a portion of water heretofore appropriated under Permit 3865, Certificate 1068. The proposed manner of use is described as being for irrigation of 131.81 acres from January 1 to December 31 of each year. The proposed place of use is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T.11N. R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T.11N., R.68E., M.D.B.&M.¹

II.

Application 81949 was filed on June 6, 2012, by the Southern Nevada Water Authority to change the place of use of 1.3417 cfs, not to exceed 190.44 afa of the waters of Swallow Creek a.k.a. Water Canyon Creek, a portion of water heretofore appropriated under Permit 27743, Certificate 9743. The proposed manner of use is described as being

¹ File No. 81948, official records in the Office of the State Engineer.

for irrigation of 47.61 acres and domestic purposes from January 1 to December 31 of each year. The proposed place of use is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T.11N. R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T.11N., R.68E., M.D.B.&M.²

III.

Application 81948 was timely protested by White Pine County on grounds as follows:

Application For Permit #3865 requires a standard headgate and weir be installed and maintained to facilitate the measurement of water as a condition of approval. A field investigation must be conducted to prove the earth and rock dam improvements still exist. Has the flow of the stream been altered? Due to the age of the original application with no map or survey on file, a new survey and map must be submitted that designates the continuous flow of Swallow Creek downstream to meet the requirements of NRS 533.060(1), 533.080(1) and 533.100(3)(a). No new map was provided with the application that clearly distinguishes between past improvements and requested improvements to be approved, while showing the creek to continue its flow downstream to support wildlife habitation and natural vegetation growth.

Secondly, upon information and belief, the proposed change in place of use and point of diversion is designated to facilitate and support SNWA's planned groundwater development and inter-basin transfer project and there is no genuine need for the water at the move-to location or reason for a change in point of diversion. The proposed groundwater development project would conflict with existing rights, would be detrimental to the public interest, would be environmentally unsound, and would unduly limit economic growth and development in the basin of origin.

Application 81949 was timely protested by White Pine County on the same grounds as those expressed in its protest to Application 81948.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 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

² File No. 81949, official records in the Office of the State Engineer.

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 81948 and 81949 and their associated protests and a hearing is not necessary.

II.

A protest issue to Application 81948 expresses concern pertaining to its base right that, "Application For Permit #3865 requires a standard headgate and weir be installed and maintained to facilitate the measurement of water as a condition of approval." The required Proof of Completion of Work and Proof of Application of Water to Beneficial Use for Permit 3865, Certificate 1068 has been timely received and approved in the Office of the State Engineer.

The State Engineer finds that a field investigation is not required to prove if the existing improvements still exist. These issues were satisfied with the filing of the Proof of Completion of Work and Proof of Application of Water to Beneficial Use.

The Protestant asks "Has the flow of the stream been altered?" The State Engineer finds Application 81948 does not propose a change in point of diversion; however, Application 81948 and supporting maps fully describe the point of diversion by bearing and tie to a found public land survey system monument as required by statute.

The protest issue "Due to the age of the original application with no map or survey on file, a new survey and map must be submitted that designates the continuous flow of Swallow Creek downstream to meet the requirements..." Again, this issue was satisfied when the required Proof of Completion of Work, Proof of Application of Water to Beneficial Use and the supporting maps for Permit 3865, Certificate 1068 were reviewed for compliance with the NRS.

The State Engineer finds that Permit 3865, Certificate 1068, and its supporting application and cultural maps were prepared by W. B. Cowell and Thos. R. King, licensed Nevada Water Rights Surveyors and that the Protestants statement that "No new map was provided with the application that clearly distinguishes between past improvements and requested improvements to be approved, while showing the creek to continue its flow downstream to support wildlife habitation and natural vegetation growth" is not a requirement by statute.

The State Engineer finds that the maps supporting Application 81948 were prepared by Timothy J. Wolf, a licensed Nevada Water Rights Surveyor, and were submitted to the Office of the State Engineer describing the proposed place of use for Application 81948 and after review, were determined to satisfy the statutory requirements.

The State Engineer finds that the water requested by Application 81948 is derived from a surface water source, not a groundwater source, for irrigation use in the Spring Valley Hydrographic Basin and does not appear to be related to or, as asserted by the Protestant, "designed to facilitate and support SNWA's planned groundwater development and inter-basin transfer project." Regarding "genuine need" the State Engineer finds the proposed manner of use is for irrigation, which meets statute.

The State Engineer finds Application 81948 does not propose to change the existing point of diversion issued under Permit 3865, Certificate 1068, as stated by the Protestant.

The State Engineer finds that Application 81948 was filed to change an existing surface water right not groundwater and its approval is not related with "the proposed groundwater development project."

The State Engineer finds that the Applicant is the sole owner of all of the active water rights on Swallow Creek, except Proof of Appropriation V-02836, a stockwater right that is upstream, and approval of Application 81948 would not conflict with existing rights, will not be detrimental to the public interest, is not environmentally unsound and would add to economic development in the Spring Valley.

The State Engineer finds the protest to Application 81948 may be overruled.

III.

A protest issue to Application 81949 expresses concern pertaining to the base right that, "Application For Permit #27743 requires a "standard headgate and measuring device must be installed and maintained to facilitate the measurement of water as a condition of approval." The required Proof of Completion of Work and Proof of Application of Water to Beneficial Use for Permit 27743, Certificate 9743 have been timely received and approved in the Office of the State Engineer.

The State Engineer finds that a field investigation is not required to prove if the existing improvements still exist. These issues were satisfied with the filing of the Proof of Completion of Work and Proof of Application of Water to Beneficial Use.

The protest asks "Has the flow of the stream been altered?" The State Engineer finds Application 81949 does not propose a change of point of diversion. The State Engineer finds Application 81949 and its supporting map fully describes the point of diversion by bearing and tie to a found public land survey system monument as required by statute.

The protest issue "Due to the age of the original application with no map or survey on file, a new survey and map must be submitted that designates the continuous flow of Swallow Creek downstream to meet the requirements..." Again, this issue was satisfied by the required Proof of Completion of Work, Proof of Application of Water to Beneficial Use and supporting maps for Permit 27743, Certificate 9748, which were reviewed for compliance with the NRS.

The State Engineer finds that Permit 27743, Certificate 9748, and the supporting application and cultural maps were prepared by Wallace T. Boundy and Richard W. Forman, licensed Nevada Water Rights Surveyors and that the Protestants statement that "No new map was provided with the application that clearly distinguishes between past improvements and requested improvements to be approved, while showing the creek to continue its flow downstream to support wildlife habitation and natural vegetation growth" is not a requirement by statute. The State Engineer finds the supporting maps fully describe the place of use as required by statute.

The State Engineer finds that the maps supporting Application 81949 were prepared by Timothy J. Wolf, a licensed Nevada Water Rights Surveyor, and were submitted to the Office of the State Engineer describing the proposed place of use for Application 81949 and after review, were determined to satisfy the statutory requirements.

The State Engineer finds that the water requested by Application 81949 is derived from a surface water source, not a groundwater source, for irrigation use in the Spring Valley Hydrographic Basin and does not appear to be related to or, as asserted by the Protestant, "designed to facilitate and support SNWA's planned groundwater

development and inter-basin transfer project.” Regarding “genuine need” the State Engineer finds the proposed manner of use is for irrigation, which meets statute.

The State Engineer finds Application 81949 does not propose to change the existing point of diversion of Permit 27743, Certificate 9748, as stated by the Protestant.

The State Engineer finds that Application 81949 was filed to change an existing surface water right not groundwater and its approval is not related to “the proposed groundwater development project.”

The State Engineer finds that the Applicant is the sole owner of all of the active water rights on Swallow Creek, except Proof of Appropriation V-02836, a stockwater right that is upstream, and would not conflict with existing rights, will not be detrimental to the public interest, is not environmentally unsound and would add to economic development in the Spring Valley Hydrographic Basin.

The State Engineer finds the protest to Application 81949 may be overruled.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate public waters where:⁴

- 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 Applications 81948 and 81949 were filed to change existing surface water not groundwater and their approval will not increase the

³ NRS Chapter 533.

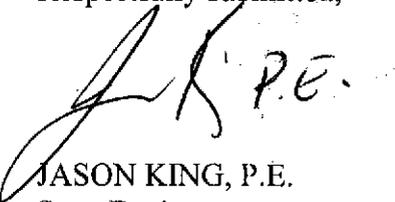
⁴ NRS § 533.370(2).

groundwater basin's current committed resource. The State Engineer concludes that many of the protest issues pertain to the completed requirements of base rights Permit 3865, Certificate 1068 and Permit 27743, Certificate 9743 and inter-basin transfers of groundwater; therefore, the protests may be overruled and the subject applications can be considered for approval.

RULING

The protests to Applications 81948 and 81949 are overruled and the applications are hereby approved subject to existing rights and payment of statutory permit fees.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 11th day of
December, 2012.