

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

IN THE MATTER OF APPLICATIONS 83719,)
83720 AND 83752 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF JERSEY HOT)
SPRING AKA SPRING "F" WITHIN THE)
JERSEY VALLEY HYDROGRAPHIC BASIN)
(132), PERSHING COUNTY, NEVADA.)

RULING

#6305

GENERAL

I.

Application 83719 was filed on April 11, 2014, by Joe Saval Company, LLC (Saval) to appropriate 0.11 cubic feet per second (cfs), not to exceed 79.6 acre-feet annually (afa) of water from Jersey Hot Spring, a.k.a. Spring "F". The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T.27N., R.40E., M.D.B.&M. The proposed manner of use and place of use is described as being for industrial purposes within Sections 5, 6 and 7, T.26N., R.40E., M.D.B.&M., Sections 2, 3, 9, 10, 15, 16, 20, 21, the W $\frac{1}{2}$ of Section 22, W $\frac{1}{2}$ of Section 27, Sections 28, 29, 30, 31, 32 and 33, all within T.27N., R.40E., M.D.B.&M., and Sections 34 and 35, T.28N., R.40E., M.D.B.&M.¹

II.

Application 83720 was filed on April 11, 2014, by Joe Saval Company, LLC to appropriate 0.11 cfs, not to exceed 79.6 afa of water from Jersey Hot Spring, a.k.a. Spring "F". The proposed point of diversion is the same as the proposed point of diversion on Application 83719. The proposed manner of use and place of use is described on the application as being for wildlife purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, T.27N.,R.40E.,M.D.B.&M.²

III.

Application 83752 was filed on April 18, 2014, by Mike and Barbara Stremler to appropriate 0.30 cfs, not to exceed 200.0 afa of water from Spring (Jersey Hot Spring). The proposed point of diversion is the same as the proposed point of diversion on Saval's Applications

¹ File No. 83719, official records in the Office of the State Engineer.

² File No. 83720, official records in the Office of the State Engineer.

83719 and 83720. The proposed manner of use and place of use is described on the application as being for irrigation within the SW¼ NE¼, SE¼ NE¼, NW¼ SE¼, NE¼ SE¼, SW¼ SE¼, and SE¼ SE¼ of Section 7, T.26N., R.40E., M.D.B.&M.³

IV.

All of the subject applications were protested on grounds that will not be considered in this ruling.^{1,2,3}

FINDINGS OF FACT

I.

Jersey Hot Spring,⁴ at one time represented one of the primary sources of surface water in Jersey Valley with several ranches claiming a historic use of its water for agricultural purposes. The relative rights to the use of the waters of Jersey Hot Spring is being addressed at the time of this ruling through a formal adjudication, which has reached the Preliminary Order of Determination phase; therefore, the extent and validity of the claims of a historic use that have been filed in the Office of the State Engineer have not been decreed.⁵ Until a decree is entered, a precise accounting of the spring's committed resource remains to be determined.

While the committed resource remains uncertain, the amount of water generated by the spring has been measured by the Nevada Division of Water Resources (NDWR), with the initial measurement of 0.1114 cfs having been made on April 28, 2009.⁶ Since then, additional measurements have been made and subsequently entered into the NDWR's Stream and Spring Flow database. The measurement taken on August 1, 2014, indicates that the flow from the spring had ceased, with the residual pool approximately 2 feet below the normal water mark.⁷ By January 30,

³ File No. 83572, official records in the Office of the State Engineer.

⁴ For the purposes of this ruling, Spring "F" will be referred to as Jersey Hot Spring.

⁵ Preliminary Order of Determination, *In The Matter Of The Determination Of The Relative Rights In And To The Waters Of Jersey Hot Springs, Butcher Canyon, Jersey Canyon (A.K.A. Old Town Canyon), Cedar Canyon And Home Station Wash And Their Tributaries, And Springs Located Within The Jersey Valley Hydrographic Basin (No. 132), Pershing And Lander Counties, Nevada*, official records in the Office of the State Engineer.

⁶ Nevada Division of Water Resources Stream and Spring Flow database, February 20, 2015, official records in the Office of the State Engineer (identified as pipe discharge at junction box).

⁷ Report of Field Investigation No. 1213, official records in the Office of the State Engineer; *and see also* Nevada Division of Water Resources Stream and Spring Flow database, February 20, 2015, official records in the Office of the State Engineer (identified as pipe discharge at junction box).

2015, the spring site was observed to be completely dry.⁸ Based upon the record of flow measurements, the State Engineer finds that the flow of Jersey Hot Spring has, over the last four years, declined to a point where it no longer generates an active flow.

II.

Pursuant to Nevada Revised Statutes § 533.370(2), before an application that requests a new appropriation of water can be considered for approval, it must be determined that there is unappropriated water at the source. Unappropriated water may be defined as the amount of water that is available for appropriation after senior water rights have been fully served. If the amount of water committed under existing water rights exceeds the amount of sustained flow produced by the source, additional requests for water through the State Engineer's application process are subject to denial.

Similarly, if the source of the surface water is found to be dominated by dry or extremely low flow conditions its suitability as a reliable source of water is questionable.

Report of Field Investigation No. 1213, confirms that Jersey Hot Spring is now dominated by low flow conditions; therefore, the State Engineer finds that it generates insufficient water to meet the appropriations requested by the subject applications.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁹

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁰

- 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.

⁸ File No. 83719, Memo to File dated February 18, 2015, official records in the Office of the State Engineer.

⁹ NRS Chapter 533.

¹⁰ NRS 533.370(2).

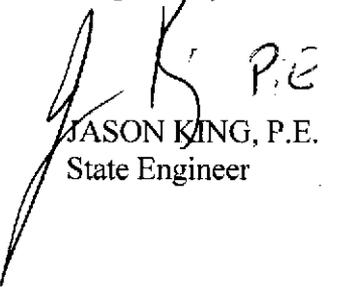
III.

The State Engineer concludes that there is insufficient water available to meet the requirements of the manners of use proposed under the subject applications and that the approval of additional appropriations of water from this source would threaten to prove detrimental to the public interest.

RULING

Applications 83719, 83720 and 83752 are hereby denied on the grounds that there is no unappropriated water at the source and to approve the applications would threaten to prove detrimental to the public interest.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 2nd day of
March, 2015.