

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

IN THE MATTER OF APPLICATION 80566)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF COLD SPRINGS WITHIN)
STEPTOE VALLEY HYDROGRAPHIC)
BASIN (179), WHITE PINE COUNTY,)
NEVADA.)

RULING

#6326

GENERAL

I.

Application 80566 was filed on February 11, 2011, by the Southern Nevada Water Authority to appropriate 0.0079 cubic feet per second of water from Cold Springs for stock watering purposes for 1,275 sheep. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.13N., R.65E., M.D.B.&M. The proposed place of use is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 34.¹

II.

Application 80566 was timely protested by White Pine County, on grounds not to be considered in this ruling.¹

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 Office of the State Engineer to evaluate the merits of Application 80566 and a hearing is not necessary.

II.

The proposed point of diversion and place of use lie within White Pine County Assessor's Parcel Number 012-270-04, which is owned by George N. Swallow.¹

¹ File No. 80566, official records in the Office of the State Engineer.

III.

By letter dated January 17, 2012, the Division of Water Resources requested the Applicant provide evidence that it had obtained legal access to the Swallow property. By letter dated February 7, 2012, the Applicant's response was that George B. Swallow was deceased and that it was "working to obtain written legal access to the property through his trustee."¹

IV.

By letter dated January 22, 2015, the Division of Water Resources again requested the Applicant provide evidence that it had obtained legal access to the Swallow property. By letter dated February 19, 2015, the Applicant's response was that "[u]nfortunately, little progress has been made securing access to this parcel."¹

CONCLUSIONS OF LAW

I.

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

II.

The State Engineer shall approve an application submitted in proper form where the applicant provides proof satisfactory to the State Engineer of the applicant's reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.³

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the 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.

² NRS Chapters 533 and 534.

³ NRS § 533.370(1)(c)(2).

⁴ NRS § 533.370(2).

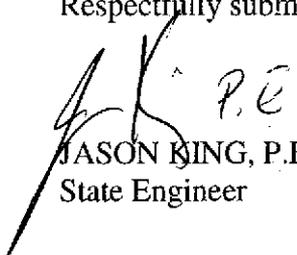
IV.

Application 80566 requests to appropriate water from a spring located upon land owned by George B. Swallow. The Applicant has failed for over four years to obtain legal access from the landowner, or his estate, to the proposed point of diversion and place of use; thus, the State Engineer concludes the Applicant has failed to provide satisfactory proof that there is a reasonable expectation the Applicant will construct the work and apply the water to the intended beneficial use. The State Engineer concludes that under these circumstances, approval of the application would threaten to prove detrimental to the public interest.

RULING

Application 80566 is hereby denied on the grounds that the Applicant has failed to provide satisfactory proof to the State Engineer that there is a reasonable expectation the Applicant will construct the work and apply the water to the intended beneficial use; therefore, approval of the application would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 17th day of
November, 2015.