

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

IN THE MATTER OF TEMPORARY APPLICATIONS )  
65001, 65502, 65503, 65504 AND 65505 )  
FILED TO CHANGE THE PLACE AND MANNER OF USE )  
OF THE PUBLIC WATERS OF SURFACE WATER )  
SOURCES WITHIN THE COLD SPRINGS VALLEY )  
HYDROGRAPHIC BASIN (100), WASHOE COUNTY, )  
NEVADA. )

RULING

# 4880

GENERAL

I.

Application 65501T was filed on September 17, 1999, by Hamilton Properties, Inc. to change the place and manner of use of 0.50 cubic feet per second (cfs) of water previously appropriated from Cold Spring under claim of vested right V-04225 for dust control and other construction purposes within Section 9, the W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 15, the N $\frac{1}{2}$ , and the N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 16, all in T.21N., R.18E., 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 Section 4, T.21N., R.18E., M.D.B.&M.<sup>1</sup>

II.

Application 65502T was filed on September 17, 1999, by Hamilton Properties, Inc. to change the place and manner of use of 0.27 cfs, not to exceed 108.0 acre-feet annually, of water previously appropriated from Cold Spring under Permit 4762, Certificate 463, for dust control and other construction purposes within Section 9, the W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 15, the N $\frac{1}{2}$ , and the N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 16, all in T.21N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, T.21N., R.18E., M.D.B.&M.<sup>2</sup>

III.

Application 65503T was filed on September 17, 1999, by Hamilton Properties, Inc. to change the place and manner of use of 0.10 cfs, not to exceed 40.0 acre-feet annually, of water previously appropriated from Streib Spring under Permit 5026, Certificate 555, for dust control and other construction purposes within Section 9, the

<sup>1</sup> File No. 65501T, official records in the office of the State Engineer.

<sup>2</sup> File No. 65502T, official records in the office of the State Engineer.

W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 15, the N $\frac{1}{2}$ , and the N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 16, all in T.21N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 4, T.21N., R.18E., M.D.B.&M.<sup>3</sup>

**IV.**

Application 65504T was filed on September 17, 1999, by Hamilton Properties, Inc. to change the place and manner of use of 0.01115 cfs, or sufficient to water 450 cattle and 10 horses, of water previously appropriated from an unnamed spring under Permit 17309, Certificate 8263, for dust control and other construction purposes within Section 9, the W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 15, the N $\frac{1}{2}$ , and the N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 16, all in T.21N., R.18E., 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 4, T.21N., R.18E., M.D.B.&M.<sup>4</sup>

**V.**

Application 65505T was filed on September 17, 1999, by Hamilton Properties, Inc. to change the place and manner of use of 1.0 cfs, not to exceed 640 acre-feet annually, of water previously appropriated from Cold Spring under Permit 41881 for dust control and other construction purposes within Section 9, the W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 15, the N $\frac{1}{2}$ , and the N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 16, all in T.21N., R.18E., 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 Section 4, T.21N., R.18E., M.D.B.&M.<sup>5</sup>

**VI.**

Applications 65501T through 65505T, inclusive, were timely protested by Utilities, Inc. of Nevada on the following grounds:<sup>1-5</sup>

1. Applicant proposes to change place of use into the certificated service territory of Utilities, Inc. of Nevada and into the place of use of our water rights.
2. Applicant proposes to change the manner of use to a use that

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<sup>3</sup> File No. 65503T, official records in the office of the State Engineer.

<sup>4</sup> File No. 65504T, official records in the office of the State Engineer.

<sup>5</sup> File No. 65505T, official records in the office of the State Engineer.

is already established in our tariffs and provided for in our current water rights and water system.

3. The proposed use will lessen our use of existing rights and the pumping of our wells in an area where the ground water has been found to be rising that may result in an increased hazard to the community if this application is approved.

Therefore, the protestant requests that the applications be denied.

#### VII.

By letter received on March 6, 2000, the applicant filed an answer to the protests<sup>1-5</sup> which alleges that it is completely unreasonable for the protestant to demand that the applicant purchase developed ground water from the protestant when existing surface water rights may be utilized for a beneficial use; and that water will be utilized both within and outside of the protestant's service area, and technically if the applicant were to receive water from the protestant it could not transport such water outside of the service area. The applicant believes that the protestant is merely attempting to extract funds from the applicant, and that it is not proposing to change tariffs or violate tariffs of the protestant. As to the protestant's third grounds, the applicant indicates that it is most difficult to understand how the utilization of a surface water source will lessen the protestant's use of its existing rights or how the application of small volumes of water for construction and dust control will ever find its way into the groundwater aquifer.

#### FINDINGS OF FACT

##### I.

The Protestant alleges that the Applicant proposes to change the place of use into the certificated service territory of Utilities, Inc. of Nevada and into the place of use of their water rights. The State Engineer finds that the protestant did not cite to any authority which prevents another person with the right to the use of surface water from using that surface water within the service area of a water utility utilizing ground water, and does not believe such authority exists.

##### II.

The Protestant alleges that the Applicant proposes to change the manner of use to a use that is already established in their tariffs

and provided for in our current water rights and water system. The State Engineer finds that the protestant did not cite to any authority which prevents another person with the right to the use of surface water from using that surface water for a purpose which is also authorized for a use by the water utility within its service area, and does not believe such authority exists.

**III.**

The Protestant alleges that the Applicant's proposed use will lessen their use of existing rights and the pumping of their wells in an area where the ground water has been found to be rising that may result in an increased hazard to the community if this application is approved. The State Engineer finds that the protestant cannot prevent the holder of a surface water right from utilizing that surface water source for dust control and construction because it believes that more ground water needs to be pumped in order to alleviate the issue of rising ground water levels.

**CONCLUSIONS**

**I.**

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

**II.**

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where<sup>7</sup>:

- a. the proposed use conflicts with existing rights; or
- b. the proposed use threatens to prove detrimental to the public interest.

**III.**

The State Engineer concludes that to grant this change application would not interfere with existing rights or threaten to prove detrimental to the public interest.

**IV.**

Environment laws and regulations require contractors to control airborne dust whether within or outside of the service area of a

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<sup>6</sup> NRS chapter 533.

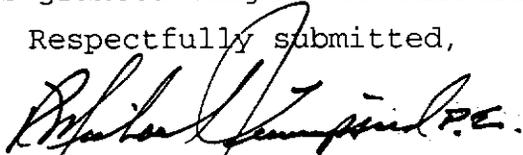
<sup>7</sup> NRS § 533.370(3).

municipal water provider. The State Engineer concludes that it is in the public interest to control dust and compact soils to support roads and structures. The State Engineer further concludes that it is he who is charged by the legislature<sup>8</sup> to dictate how and where the state's water is used and not the protestant.

**RULING**

The protests to Applications 65501T through 65505T are hereby overruled and the applications granted subject to existing rights.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJT/cl

Dated this 14th day of  
March, 2000.

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<sup>8</sup> NRS chapters 532 and 533.