

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

IN THE MATTER OF APPLICATION)
68829 FILED TO APPROPRIATE THE)
UNDERGROUND WATERS OF THE)
TRUCKEE MEADOWS HYDROGRAPHIC)
BASIN (87), WASHOE COUNTY,)
NEVADA.)

RULING

5160

GENERAL

I.

Application 68829 was filed on May 17, 2002, by Sam Jaksick, Jr. and Gwendolyn C. Dixon to appropriate 0.275 cubic feet per second (cfs) of the underground waters of the Truckee Meadows Hydrographic Basin for commercial fish rearing and domestic purposes within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.18N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 12. Item 12, the remarks section of the application, indicates that the purpose of the application is to request a diversion rate to allow for 199.02 acre-feet that is alleged to remain under Permit 12791, Certificate 4111, on the grounds that previous deeds, applications and permits inadvertently conveyed and/or transferred an incorrect diversion rate, leaving duty remaining under Permit 12791 without a corresponding diversion rate, and that no additional duty is being requested under this application or existing Permit 12791.¹

FINDINGS OF FACT

I.

Certificate No. 4111, issued under Permit 12791, was issued on July 23, 1954, for 2.50 cfs for commercial fish rearing and domestic purposes. The Certificate was issued pursuant to a Proof of Beneficial Use filed by the holder of the permit in 1954, which

¹ File No. 68829, official records in the Office of the State Engineer.

indicated a use of 2.50 cfs. The State Engineer finds only 2.50 cfs of diversion rate was authorized under Permit 12791, Certificate 4111, and that 2.50 cfs is the limit and extent of the water right under Permit 12791, Certificate 4111.

II.

After Certificate 4111 was issued under Permit 12791, the permit/certificate was acquired by Sam Jaksick, Jr. and Gwendolyn C. Dixon (formerly Gwendolyn C. Jaksick).

In 1984, Sam Jaksick, Jr. filed Application 47680, which requested a change in the point of diversion, place and manner of use of 1.00 cfs, total consumptive use of 524.9 acre-feet annually (afa), a portion of water previously appropriated under Permit 12791, Certificate 4111. A permit was granted under the application for the amount the applicant requested and transferred 1.00 cfs, not to exceed 524.90 afa, thereby reducing Permit 12791, Certificate 4111, by 1.00 cfs leaving 1.50 cfs of diversion rate under Permit 12791, Certificate 4111.

In 1986, Sam Jaksick, Jr. and Gwendolyn C. Dixon filed Application 49695, which requested a change in the point of diversion, place and manner of use of 1.30 cfs a portion of water previously appropriated under Permit 12791, Certificate 4111. A permit was granted under the application for the amount the applicant requested and transferred 1.30 cfs, not to exceed 941.16 afa, thereby reducing Permit 12791, Certificate 4111, by 1.30 cfs leaving 0.20 cfs of diversion rate under Permit 12791, Certificate 4111.

By letter dated February 2, 1987, an engineer from Lumos & Associates, Inc. wrote the State Engineer and indicated that Permit 12791 was issued for 2.50 cfs with no limiting duty.² He indicated that it was his belief that if the original diversion rate under the certificate was expanded, the maximum allowable duty under Permit 12791 would be 1,809.93 afa, and that it

² File No. 12791, official records in the Office of the State Engineer.

appeared that 199.07 afa (1809.93-1610.86) had been lost in the shuffle. The State Engineer's Office was asked if there was any way to recover the 199.07 afa. For example, could 0.275 cfs be withdrawn from Permit 47680 and revert back to Permit 12791, Certificate 4111 without affecting the duty under Permit 47680.

By letter dated April 22, 1987, the State Engineer's Office responded to the letter of February 2, 1987, stating that the withdrawal of a portion of the diversion rate under Permit 47680 would not be allowed unless there was a corresponding portion of the duty also withdrawn. The State Engineer finds that his April 22, 1987, letter was a decision of the State Engineer and was subject to the 30-day appeal statute found under NRS § 533.450.

III.

Item 12, the remarks section of the application, indicates that the purpose of the Application 68829 is to request a diversion rate to allow for 199.02 acre-feet that is alleged to remain under Permit 12791, Certificate 4111, on the grounds that previous deeds, applications and permits inadvertently conveyed and/or transferred an incorrect diversion rate, leaving duty remaining under Permit 12791, Certificate 4111 without a corresponding diversion rate, and that no additional duty is being requested under this application or existing Permit 12791, Certificate 4111. The State Engineer finds these applicants are attempting to revitalize the decision that was not appealed in 1987. The State Engineer finds when the applicants transferred the diversion rate it left no duty under Permit 12791, Certificate 4111, except for that evidenced by the 0.20 cfs that remained under Permit 12791, Certificate 4111 in 1987.

IV.

Nevada Revised Statute § 533.335(3) provides that each application to appropriate shall contain the amount of water which is desired to be appropriated expressed in terms of cubic feet per second. The State Engineer finds it was these very applicants that filed change Applications 47680 and 49695 for the diversion

rates and duty requested and the decision on those applications is final. The State Engineer finds Application 68829 is attempting to create a diversion rate that does not exist for the duty alleged to remain under Permit 12791, Certificate 4111, on the grounds that previous deeds, applications and permits inadvertently conveyed and/or transferred an incorrect diversion rate. The State Engineer finds there is no provision of Nevada Water Law that allows for the creation of a diversion rate to recapture the 199.07 acre-feet they alleged accidentally reverted to the groundwater system when they transferred the diversion rates they did under their change applications. The State Engineer finds the actions of these very applicants resulted in the conveyance of the diversion rate at a duty less than what could have been conveyed and that decision is final. The State Engineer finds there is no duty of 199.07 afa that can be recaptured under Application 68829. The State Engineer finds the diversion rate that was certificated is all that existed under Permit 12791, Certificate 4111, and none can be created by the method these applicants have chosen to attempt.

v.

The State Engineer finds that many applications requesting a new appropriation of underground water from the Truckee Meadows Hydrographic Basin have been denied on the grounds that the committed groundwater resources exceeds the estimate of the groundwater basin's natural recharge; thus, granting a new appropriation would conflict with existing rights and threaten to prove detrimental to the public interest.³ The State Engineer finds these applicants are attempting to create a way to obtain an underground water right in a groundwater basin in which the State Engineer has denied applications for years.

³ State Engineer's Ruling No. 4844, dated January 24, 2002, official records in the Office of the State Engineer.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁵

- 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 protectible 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 there is no duty of water left from Permit 12791, Certificate 4111, which can be resurrected by Application 68829. The State Engineer concludes that the diversion rate is what was certificated and there is no additional diversion rate that can be created as these applicants are attempting to do under Application 68829. The State Engineer concludes these very applicants, by their own actions, requested the transfer of the diversion rate from Permit 12791, Certificate 4111, for 524.9 acre feet.

IV.

The State Engineer concludes the granting of a water right under Application 68829 would conflict with existing rights and threaten to prove detrimental to the public interest.

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.370(3).

Ruling
Page 6

RULING

Application 68829 is hereby denied on the grounds that the granting of a water right would conflict with existing rights and threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 3rd day of

October, 2002.