

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

IN THE MATTER OF APPLICATIONS)
52206, 52207, 52208, 52209, 52211,)
52212, 52214, 52215, 52216, 52217,)
52218, 52219, 52220, AND 52221)
FILED TO APPROPRIATE THE)
UNDERGROUND WATERS OF THE CARSON)
VALLEY HYDROGRAPHIC BASIN (105))
APPLICATIONS 52222 AND 52223 TO)
APPROPRIATE THE UNDERGROUND WATERS)
OF THE ANTELOPE VALLEY)
HYDROGRAPHIC BASIN (106), DOUGLAS)
COUNTY, NEVADA.)

RULING

5255

GENERAL

I.

Application 52206 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 1.9 cubic feet per second (cfs), not to exceed 1,375 acre-feet annually (afa) or 448.0 million gallons annually (mga) of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within Douglas County as described by legal subdivision in Exhibit A as attached to the application and as shown on Sheets 1 through 13 of the map that accompanied the application. These sheets indicate the proposed places of use as being areas identified as Alpine View, Jacks Valley/Indian Hills, Genoa, Johnson Lane, Airport, East Valley-North, Minden/Gardnerville, Gardnerville/East Valley-South, Fish Springs, Mottsville/Sheridan Acres, Gardnerville Ranchos, and Pinenut/Ruhenstroth. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T.14N., R.20E., M.D.B.&M.¹

Application 52207 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 1.9 cfs, not to exceed 1,375 afa or

¹ File No. 52206, official records in the Office of the State Engineer.

448.0 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52206. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T.14N., R.20E., M.D.B.&M.²

Application 52208 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 1.9 cfs, not to exceed 1,375 afa or 448.0 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52206. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T.13N., R.20E., M.D.B.&M.³

Application 52209 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 4.9 cfs, not to exceed 3,548 afa or 1,156.1 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52206. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T.13N., R.20E., M.D.B.&M.⁴

Application 52211 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 4.9 cfs, not to exceed 3,548 afa or 1,156.1 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52206. The proposed point of

² File No. 52207, official records in the Office of the State Engineer.

³ File No. 52208, official records in the Office of the State Engineer.

⁴ File No. 52209, official records in the Office of the State Engineer.

diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T.13N., R.20E., M.D.B.&M.⁵

Application 52212 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 4.9 cfs, not to exceed 3,548 afa or 1,156.1 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52206. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T.13N., R.19E., M.D.B.&M.⁶

Application 52214 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 4.9 cfs, not to exceed 3,548 afa or 1,156.1 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52206. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T.12N., R.20E., M.D.B.&M.⁷

Application 52215 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 4.9 cfs, not to exceed 3,548 afa or 1,156.1 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52206. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T.12N., R.20E., M.D.B.&M.⁸

⁵ File No. 52211, official records in the Office of the State Engineer.

⁶ File No. 52212, official records in the Office of the State Engineer.

⁷ File No. 52214, official records in the Office of the State Engineer.

⁸ File No. 52215, official records in the Office of the State Engineer.

Application 52216 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 1.9 cfs, not to exceed 1,375 afa or 448.0 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52206. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, T.12N., R.21E., M.D.B.&M.⁹

Application 52217 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 1.9 cfs, not to exceed 1,375 afa or 448.0 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52206. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, T.12N., R.21E., M.D.B.&M.¹⁰

Application 52218 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 4.9 cfs, not to exceed 3,548 afa or 1,156.1 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52206. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T.12N., R.19E., M.D.B.&M.¹¹

Application 52219 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 1.9 cfs, not to exceed 1,375 afa or 448.0 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as

⁹ File No. 52216, official records in the Office of the State Engineer.

¹⁰ File No. 52217, official records in the Office of the State Engineer.

¹¹ File No. 52218, official records in the Office of the State Engineer.

described under Application 52206. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.12N., R.20E., M.D.B.&M.¹²

Application 52220 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 1.9 cfs, not to exceed 1,375 afa or 448.0 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52206. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, T.12N., R.20E., M.D.B.&M.¹³

Application 52221 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 1.9 cfs, not to exceed 1,375 afa or 448.0 mga of the underground water of the Carson Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52206. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T.12N., R.21E., M.D.B.&M.¹⁴

Application 52222 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 1.9 cfs, not to exceed 1,375 afa or 448.0 mga of the underground water of the Antelope Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within Douglas County as described by legal subdivision in Exhibit B as attached to the application and as shown on Sheets 14 through 17 of the map that accompanied the application. These sheets indicate the proposed places of use as being areas identified as Topaz Ranch Estates and Topaz Lake. The proposed point of diversion is described as being

¹² File No. 52219, official records in the Office of the State Engineer.

¹³ File No. 52220, official records in the Office of the State Engineer.

¹⁴ File No. 52221, official records in the Office of the State Engineer.

located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T.10N., R.22E., M.D.B.&M.¹⁵

Application 52223 was filed on June 10, 1988, by Douglas County, Nevada, to appropriate 1.9 cfs, not to exceed 1,375 afa or 448.0 mga of the underground water of the Antelope Valley Hydrographic Basin, Douglas County, Nevada. The water is to be used for quasi-municipal purposes within the same places of use as described under Application 52222. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, T.10N., R.22E., M.D.B.&M.¹⁶

II.

Applications 52206, 52207, 52208, 52209, 52211, 52212, 52214, 52215, 52216, 52217, 52218, 52219, 52220 and 52221 were timely protested by the Truckee-Carson Irrigation District on the grounds that:

This application will tend to adversely affect adjacent and downstream adjudicated surface waters since the diversion will consumptively use water from a groundwater basin which has been fully appropriated, designated by the State Engineer and where applications for Quasi-Municipal use have previously been denied.¹⁻¹⁴

III.

Application 52206 was timely protested by the Carson City Public Works Dept. on the grounds that:

Protestant is the primary holder of groundwater rights in Eagle Valley. Protestant has been limited to 6,500 acre-feet annually of pumpage from Eagle Valley, even though it holds permits for a greater amount. If it is determined that there is unappropriated water in the source, protestant should be allowed to divert it from existing wells under approved permits. There is no unappropriated water in the source to serve this new application. Douglas County has not provided any basis or plan demonstrating the need or reason for this

¹⁵ File No. 52222, official records in the Office of the State Engineer.

¹⁶ File No. 52223, official records in the Office of the State Engineer.

application. As filed this application would adversely effect existing rights and be detrimental to the public welfare.¹

IV.

Applications 52206, 52207, 52208, 52209, 52211, 52212, 52214, 52215, 52216, 52217, 52218, 52219, 52220 and 52221 were timely protested by Ronald Simek on the grounds that:

Protestant owns property in the area covered by the proposed Place of Use under this application. Douglas County has no overall water service plan or service commitment for the area and has not demonstrated a need for the water applied for under this application and other applications in Carson Valley. Protestant feels that granting a permit under this application would adversely effect existing rights and be detrimental to the public welfare.¹⁻¹⁴

V.

Application 52206 was timely protested by Sierra Estates General Improvement District on the grounds that:

The service area for Sierra Estates General Improvement District is included under the Place of Use for this application. The proposed Point of Diversion appears to be less than one-quarter mile from wells owned by the district. Douglas County has not indicated any basis for this application or the way in which it would effect or be integrated with the applicants prior rights or place of use. Protestant feels that if this application were granted it would adversely effect existing water rights and be detrimental to the public welfare. Protestant also feels that there is not unappropriated water in the source to serve a request of this magnitude.¹

When the applicant filed its amended application, by letter dated January 12, 1989, Protestant Sierra Estates General Improvement District amended its protest indicating that it was still opposing the application on the grounds of the proposed place of use, but that it was no longer protesting the proposed point of diversion.¹

VI.

Application 52206 was timely protested by Edgar S. Roberts on the grounds that:

Protestant owns property and water rights within the proposed Place of Use as applied for under this application. The proposed Point of Diversion appears to be approximately one-half mile from one of the wells owned by the protestant. Douglas County has no overall water service plan or service commitment for the area and has not demonstrated a need for the water as applied for under this application. Granting a permit under this application would adversely effect existing rights and be detrimental to the public welfare. Protestant also feels that there is not unappropriated water in the source to serve a request of this magnitude.¹

When the applicant filed its amended application, by letter dated January 12, 1989, Protestant Edgar S. Roberts amended his protest indicating that he was still opposing the application on the grounds of the proposed place of use including his property and water rights, but that he was no longer protesting the proposed point of diversion.¹

VII.

Applications 52206, 52207, 52208, 52209, 52211, 52212, 52214, 52215, 52216, 52217, 52218, 52219, 52220 and 52221 were timely protested by Sierra Creek Ranch, Inc. on the grounds that:

Applicant has filed applications which show a Place of Use that includes property and water right Place of Use areas owned by the protestant. Douglas County has no established water service plan or commitment to provide water service to the Place of use area. The inclusion of protestant's property in the Place of Use adversely effects the protestant's existing water rights and use of his property. Granting of a permit under this application would also be detrimental to the public welfare.¹⁻¹⁴

VIII.

Applications 52219 and 52220 were timely protested by The Southern Nevada Culinary and Bartenders Pension Trust on the grounds that:

Protestant owns water rights which are located within a portion of the Place of Use under this application. Douglas County has applied for this well site and another well site which are close to the protestant's Point of Diversion. This application has a Place of Use which includes the water service area and water rights of an existing water purveyor, Gardnerville Ranchos General Improvement District. The reason for the County's application is not stated. It is in conflict with existing rights, their Points of Diversion and their Places of Use. Granting of this application may adversely affect existing rights and would be detrimental to the public welfare.^{12, 13}

IX.

Applications 52219 and 52220 were timely protested by Robert F. Lauder on the grounds that:

The point of diversion is within the place of use of Gardnerville Ranchos General Improvement District (GRGID), and is near wells Nos. 1, 2, 3 and 4 currently used by GRGID, and may therefore affect adversely the performance of those wells. Reference map filed for Permits 48749-48761.^{12, 13}

X.

Applications 52222 and 52223 were timely protested by the Truckee-Carson Irrigation District on the grounds that:

This application will tend to adversely affect adjacent and downstream adjudicated surface waters since the diversion will consumptively use water from a groundwater basin which has been fully appropriated and designated by the State Engineer.^{15, 16}

XI.

Application 52222 was timely protested by the Evan L. Allred, D.M.D., Sleeping Elephant Ranch on the grounds that:

Protestant owns property in the area and has irrigation and domestic certificated water rights on this property. The proposed Point of Diversion appears to be less than one-quarter mile from a well owned by protestant and within a mile of several other rights and wells owned by protestant. The Place of Use includes property owned by the protestant. Douglas County has no overall water service plan or service commitment for the area and has not demonstrated a need for the water applied for under this application. The Place of Use also includes a portion of the service area of another water purveyor. Granting a permit under this application would adversely effect existing rights and be detrimental to the public welfare.¹⁵

FINDINGS OF FACT

I.

By letter dated October 19, 1988, Douglas County requested the State Engineer withhold action on Applications 52206 through 52221, inclusive, "until such future time as the Office of the State Engineer has: finalized its report "Carson Valley Ground Water Pumpage"; inventoried all existing certificated and permitted ground water rights as the basis of a determination by the State Engineer regarding forfeiture of water rights; actually caused water rights determined to be forfeited to be cancelled, thereby resulting in the return of such water to the source, subject to immediate appropriation under Application Nos. 52206 through 52221."¹ The State Engineer's Office finalized the Carson Valley Ground Water Pumpage Inventory in the Spring of 1989 and subsequently complied yearly pumpage inventories of the Carson Valley Pumpage Inventories.¹⁷

By letter dated June 15, 1999, the State Engineer requested Douglas County to inform him of its current plans regarding Applications 52214 through 52223.¹⁸ On March 27, 2000, the State Engineer again requested that Douglas County respond as to its

¹⁷ Official records in the Office of the State Engineer.

¹⁸ File No. 52214, official records in the Office of the State Engineer. A memo to the file dated March 29, 2000, indicates the letter should have covered Applications 52206 through 52223.

plans regarding these applications, and informed the County that if it was no longer interested in pursuing the applications they should be withdrawn. The County was informed that failure to respond within 30 days may result in denial of the applications. By letter dated March 23, 2000,¹⁹ Douglas County, in a one-paragraph response, requested the State Engineer to act on Applications 52206 through 52221 indicating that the water will be needed to address build-out demands and the development of a regional water system.^{1, 20}

II.

The Douglas County Master Plan adopted April 18, 1996, indicates that Douglas County's policy is to coordinate a regional approach to water resources development and management, and that the County shall facilitate coordinated development of water resources management in Douglas County by working with the Carson Valley Subconservancy District, Carson Valley Water Authority, improvement districts, Washoe Tribe and other appropriate water purveyors.²¹ In the Douglas County Capital Improvement Program for Fiscal Years 2002-2006, the only project that indicates the potential for the additional use of water applied for under Douglas County's pending applications is identified as the airport wells and water system. "This project is the installation of new wells at the airport and distribution system improvements...The new wells and distribution system improvements will allow the county to meet current and future water quantity needs for the east valley."²² The State Engineer finds that Douglas County's March 23, 2000, response as to its plans regarding these applications provided insufficient information and provided no

¹⁹ The State Engineer notes this letter and the letter from the State Engineer must have crossed in the mail.

²⁰ Application 52213 was withdrawn by the applicant. File No. 52213, official records in the Office of the State Engineer.

²¹ Policy 4.11.01.

²² Capital Improvements Program for Fiscal Years 2002-2006, p. 73.

indication of any plans for a county-wide water system or stand alone county water systems that would place the water rights applied for under Applications 52206, 52207, 52208, 52209, 52211, 52212, 52214, 52215, 52216, 52217, 52218, 52219, 52220, 52221, 52222 and 52223 to beneficial use with reasonable diligence.

CONCLUSION

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.²³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:²⁴

- 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.

Nevada Revised Statute § 533.030 provides that "subject to existing rights, and except as otherwise provided in this section, all water may be appropriated for beneficial use as provided in this chapter and not otherwise." Nevada Revised Statute § 533.035 provides that "beneficial use shall be the basis, the measure and the limit of the right to the use of water." Nevada Revised Statute § 533.045 provides that "when the necessity for the use of the water does not exist, the right to divert it ceases, and no person shall be permitted to divert or use the waters of this

²³ NRS chapters 533 and 534.

²⁴ NRS § 533.370(3).

state except at such times as the water is required for a beneficial purpose." Nevada Revised Statute § 533.060 provides that "rights to the use of water must be limited and restricted to as much as may be necessary..." Nevada Revised Statute § 533.070 provides that "the quantity of water ...which may be appropriated in this state shall be limited to such water as shall reasonably be required for the beneficial use to be served."

Nevada Revised Statute § 533.370 provides that an applicant must provide proof satisfactory to the State Engineer of an intention in good faith to construct any works necessary and apply the water to the intended beneficial use with reasonable diligence; and a financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.

The State Engineer concludes that Douglas County did not provide sufficient evidence and there is insufficient evidence found in the plans and budgets of the County to demonstrate what beneficial use would be made of the water applied for under these applications or any proof satisfactory of an intention in good faith to construct any works necessary with reasonable diligence or a financial ability and reasonable expectation to actually construct the works of diversion and apply the water to the intended beneficial use with reasonable diligence; therefore, granting permits under the applications would threaten to prove detrimental to the public interest.

RULING

Applications 52206, 52207, 52208, 52209, 52211, 52212, 52214, 52215, 52216, 52217, 52218, 52219, 52220, 52221, 52222 and 52223 are hereby denied on the grounds that to grant permits under said

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applications would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 6th day
of June, 2003.