

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

IN THE MATTER OF PROTESTED)
APPLICATION 69664 FILED TO CHANGE THE)
POINT OF DIVERSION OF THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
PREVIOUSLY APPROPRIATED UNDER)
PERMIT 64978 WITHIN THE DRY VALLEY)
HYDROGRAPHIC BASIN (95), WASHOE)
COUNTY, NEVADA.)

RULING

5568

GENERAL

I.

Application 69664 was filed on February 25, 2003, by Intermountain Pipeline, Ltd. and later assigned to Intermountain Water Supply, Ltd. a Nevada Limited Liability Company to change the point of diversion of 2.0 cubic feet per second (cfs) of underground water previously permitted for appropriation under Permit 64978. The proposed manner of use and place of use is described on the application as being for municipal and domestic purposes within the Lemmon Valley Hydrographic Basin. The proposed place of use is further described as being located within Sections 1 through 36, T.21N., R.19E., M.D.B.&M.; Section 36, T.21N., R.18E., M.D.B.&M.; Sections 1 through 12, 15, 16, and 17, T.20N., R.19E., M.D.B.&M.; and Sections 1 and 12, T.20N., R.18E., M.D.B.&M. The changes requested by Application 69664, if approved, would transfer the applicant's existing point of diversion from the NW¼ NW¼ of Section 11, T.24N., R.19E., M.D.B.&M. to a point which is located within the SE¼ SW¼ of Section 9, T.24N., R.18E., M.D.B.&M.¹

II.

Application 69664 was timely protested by Norman Knox on the following grounds:¹

I am owner of S½ Sec 9 T24N R18E and Intermountain has no permission to be on the land and I don't want the water to leeve [sic] the dry valley basin.

III.

Application 69664 was timely protested by Washoe County on the following grounds:¹

The above referenced applications are filed by Intermountain Pipeline Ltd. to appropriate a total combined duty of 2997.00 acre-feet annually. The points of

¹ File No. 69664, official records in the Office of the State Engineer.

diversion for these applications are within Dry Valley Hydrographic Basin in Washoe County. U.S.G.S. Reconnaissance Report Number 43 estimates the perennial yield of this basin at 1000.00 acre-feet. Washoe County through the Regional Water Planning Commission has funded a study by U.S.G.S. to better define the discharge out of this basin which will lead to a better understanding of the perennial yield of this basin.

Washoe County hereby requests that Applications 69663, 69664, and 69665 be denied or that the total combined duty of Applications 69663, 69664, 69665, and 66961 (previously protested by Washoe County) be limited to the currently established perennial yield of 1000.00 acre-feet. The County's protest is based on the following grounds:

- Granting of these permits at quantities greater than the safe sustainable yield of this basin would constitute ground water mining and as such is contrary to public interest and contrary to Washoe County Development Code, Public Services and Facilities Element PSF1.10 and PSF1.10.2.
- Based on currently established data, there is only 1000.00 acre-feet of water available in the source.

IV.

Application 69664 was timely protested by Carolyn Mendoza, on the following grounds:¹

Adversely impacts existing water rights for planned land use.

They have NO access to the property unless Mr. Danfelt grants it to them.

Detriment to public interest and to our community [sic].

No easement has been granted to establish a third party well

Detrimental to existing water rights

V.

Application 69664 was timely protested by John Matley & Son, on the following grounds:¹

Dry Valley straddles boundary between NV and Ca

Dry Valley drainage and aquafer [sic] flow west and feed the Long Valley aquafer [sic], important to many users. Water must not be extracted and transferred from this natural system to another unrelated basin as damage will result to the natural ecosystem as well as to agriculture interests in the Long Valley drainage.

VI.

Application 69664 was timely protested by Lassen County, on the following grounds:¹

1. Approval of the subject application will have an adverse impact on flows of Long Valley Creek and, accordingly, will adversely impact existing rights.
2. Approval of the subject application will have an adverse impact on existing down-gradient ground-water users.

3. Approval of the subject application will adversely impact existing water sources presently utilized by livestock and wildlife in the form of springs and seeps as well as vegetation dependent on discharge in and around the proposed point of diversion.
4. Approval of the subject application is not in the public interest because pumping of the volume of ground-water represented by the subject application, particularly when combined with other applications seeking to have the points of diversion changed to the same general area, will result in a water mining situation and long-term detrimental impact on the aquifer.
5. The applicant does not own or control the land upon which it seeks to divert ground-water under the subject application.
6. There is insufficient water in the proposed source.

VII.

Application 69664 was timely protested by David Danfelt, beneficiary to the estate of William S. Dickinson, Wilburn Ranch, on the following grounds:¹

- Adversely impacts existing water rights for planned land use.
- Truck traffic & access to property is an unwanted nuisance.
- Detriment to public interest.
- No easement has been granted to establish a third party well.
- Detriment to existing water rights.

VIII.

Application 69664 was timely protested by Wilburn Ranch and the Estate of William S. Dickinson, Jr., on the following grounds:¹

- 1) Adverse effects on existing water rights and aquifer [sic] viability, to contiguous land holdings spanning Washoe and Lassen Counties.
- 2) Unknown easement provisions and possible negative effects from well access to new site(s), and abuse of any existing easements for other than original purposes.
- 3) Detrimental effects upon valuation and viability of private landholders in Dry Valley in favor of private landholders in Lemon [sic] Valley.
- 4) Unknown effects upon future public interests in Dry Valley, and detrimental effects upon existing domestic wells.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 533.365(3) 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 in the case of protested Application 69664, there is

sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

II.

Application 69664 seeks to change the point of diversion of water previously appropriated under Permit 64978. The proposed point of diversion is located within the SE¼ SW¼ of Section 9, T. 24N., R.18E., M.D.B.&M. in Washoe County, Nevada. Records from the Washoe County Assessor's interactive website indicates that the land is owned by Wilburn Ranch, Inc.²

The applicant has indicated that it is aware that the proposed point of diversion is located upon Wilburn Ranch land. Additionally, the applicant understands that the issuance of a water right permit does not grant the applicant any rights of ingress or egress to the proposed point of diversion. By letter dated December 8, 2003, the applicant indicated that it would try to negotiate access with the landowner or exercise rights of condemnation.³

Since that time, the applicant has drilled four test wells in lower Dry Valley where access is available. The applicant has advised the Office of the State Engineer that, upon approval of change Application 69664, the applicant will file an additional application to change the point of diversion to an existing test well site. The applicant further suggested that any approval of Application 69664 be conditioned upon filing such application, which would render the access issue at the proposed point of diversion of Application 69664 moot.⁴

Water right permits are issued under a set of terms and conditions that further define the manner in which water can be appropriated for a beneficial use. One of the most common conditions placed on a permit is a provision that the issuance of the permit does not grant the permittee egress or ingress to the permitted point of diversion. Access to a water source, which is located upon private land not controlled by the applicant, must be obtained through understandings and agreements between the parties or some other legal method. Prior to the approval of a water right permit, it must be determined that there is a reasonable expectation that the water requested for appropriation will be placed to its proposed beneficial use. An examination of the land ownership records shows that the applicant does not own or control the land at the proposed point of diversion. However, the applicant has requested that any approval

² See, Office of the Washoe County Assessor Real Property Assessment Data and Assessor's Map, December 6, 2005, within File No. 69664, official records in the Office of the State Engineer.

³ See, Intermountain Pipeline, Ltd. letter to State Engineer, December 8, 2003, within File No. 69664, official records in the Office of the State Engineer.

⁴ See, Intermountain Pipeline, Ltd. letter to State Engineer, October 3, 2005, within File No. 69664, official records in the Office of the State Engineer.

of Application 69664 be conditioned upon the access issue being resolved. The applicant has indicated that the issue will be resolved through negotiating access with the landowner, condemnation, or the filing of an additional change application to a proposed point of diversion where there is legal access.

The State Engineer finds that the issue of access to the proposed point of diversion can be resolved through the conditioning of any approval of Application 69664.

III.

The State Engineer issued Permit 64978, which is the basis for change Application 69664, on January 11, 2002, for an individual duty of 1,447 acre-feet annually (afa) and a total combined duty of Permits 64977, 64978 and 66400 not to exceed 2,996 afa. Permit 64978 was approved for an inter-basin transfer of water with the point of diversion in Dry Valley and the place of use in Lemmon Valley. In approving Permit 64978, the State Engineer made the determination that Permit 64978 complied with the provisions of NRS § 533.370. Application 69664 does not seek an additional appropriation of water, only a change in the point of diversion of an existing water right permit within Dry Valley.

The State Engineer finds that the issues related to water availability and inter-basin transfer have been settled with the issuance of Permit 64978 and will not be revisited for a point of diversion change as proposed under Application 69664.

IV.

A determination was made, after an examination of the records of the Office of the State Engineer, that there is only one additional water right permit, proof or claim filed for the proposed underground water source within the Dry Valley Hydrographic Basin exclusive of the applicant's permits. This is a certificated water right for irrigation and domestic purposes at a duty not to exceed 25.60 afa. The permit number is Permit 28097, Certificate 10521 and the current owner of record is shown as John G. Lenz.⁵ It should be noted that Mr. Lenz is not listed as a protestant to Application 69664. Additionally, the applicant has indicated that there is currently only one house in Dry Valley utilizing an underground domestic water supply.⁶

Evidence submitted by the applicant indicates that there will not be an unreasonable lowering of the water table in the vicinity of the proposed point of diversion.⁷

⁵ Nevada Division of Water Resources, *Water Rights Database Special Hydrographic Abstract*, December 7, 2005.

⁶ See, Intermountain Pipeline, Ltd. letter to State Engineer, October 3, 2005, within File No. 69664, official records in the Office of the State Engineer.

⁷ See, Memorandum, *Intermountain Water Supply - Dry Valley Test Wells*, Smith, Dwight L., P.E., R.G., September 9, 2005, within File No. 69664, official records in the Office of the State Engineer.

Nevada water law does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as any protectible interests in existing domestic wells and the rights of existing appropriators can be satisfied. Additionally, Nevada water law requires the State Engineer to include as a condition of the permit that pumping water pursuant to the permit may be limited or prohibited to prevent any adverse effects on an existing domestic well located within 2,500 feet of the well.⁸ A review of Application 69664 and NRS § 534.110, shows that any permit issued under Application 69664 would fall within the criteria of this statute and would include the above stated permit condition giving the State Engineer the authority to limit or prohibit the pumping of water at the proposed well site.

The State Engineer finds that protections exist within the Nevada water law to protect domestic well owners and existing water right holders from an unreasonable lowering of the water table, should such impacts occur as a result of pumping water at the proposed well site. The State Engineer further finds that none of the protestants currently hold water rights in the Dry Valley Hydrographic Basin.

CONCLUSIONS

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 a change 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 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.

⁸ NRS § 534.110 (5).

⁹ NRS chapters 533 and 534.

¹⁰ NRS § 533.370 (4).

III.

There is one existing water right under Permit 28097, Certificate 10521 for irrigation and domestic purposes and it is associated with one house within the Dry Valley Hydrographic Basin. The owner of this existing right did not file a protest against Application 69664. Evidence from the applicant indicates that approval of Application 69664 will not result in an unreasonable lowering of the water table and therefore, will not impair existing rights or protectible interests in domestic wells. There are also additional protections for existing groundwater rights and existing domestic wells within the Nevada water law should it be determined by the State Engineer that an unreasonable lowering of the water table has occurred.

The State Engineer concludes that Application 69664 will not conflict with existing rights and will not conflict with protectible interests in existing domestic wells

IV.

The protest issues regarding access to the proposed point of diversion can be resolved by conditioning the approval of any permit that may be issued under Application 69664; therefore, the State Engineer concludes that the proposed change in point of diversion will not threaten to prove detrimental to the public interest.

V.

The State Engineer concludes that none of the protestants to Application 69664 hold existing underground water rights within the Dry Valley Hydrographic Basin.

VI.

Application 69664 requests a change in the point of diversion of an existing water right permit issued by the State Engineer under Permit 64978. The State Engineer concludes that the protest issues regarding the inter-basin transfer of water and water availability were settled by the issuance of Permit 64978; therefore, those protest issues are dismissed.

RULING

The protests to Application 69664 are hereby overruled and the application is approved subject to:

1. Existing water rights;
2. Payment of the statutory permit fee;
3. Permit terms and conditions.

As a condition of approval, Application 69664 will be held in abeyance for a period of up to ninety (90) days from the date of this ruling. During that time period, the applicant must provide evidence of access to the proposed point of diversion or file a change application to

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move the point of diversion to a location where legal access can be obtained or the permit will not be issued.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 28th day of

February, 2006.