

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

IN THE MATTER OF APPLICATION 73553)
FILED TO CHANGE THE POINT OF)
DIVERSION, PLACE OF USE AND MANNER)
OF USE OF THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 19872,)
CERTIFICATE 5976 WITHIN THE)
PAHRUMP VALLEY HYDROGRAPHIC)
BASIN (162), NYE COUNTY, NEVADA.)

RULING
#5641

GENERAL

I.

Application 73553 was filed on December 5, 2005, by Concordia Homes of Nevada, Inc., to change the point of diversion, place of use and manner of use of 380.10 acre-feet annually (afa) a portion of underground water previously permitted for appropriation under Permit 19872, Certificate 5976. The proposed manner of use and place of use is described as being for quasi-municipal and domestic purposes within portions of the NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and Government Lot 2 all within Section 13, T.21S., R.53E., M.D.B.&M. The changes requested by Application 73553, if approved, would transfer the Applicant's existing point of diversion from Government Lot 1 of the NE $\frac{1}{4}$ of Section 13, T.21S., R.53E., M.D.B.&M. to a point which is located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T.21S., R.53E., M.D.B.&M. The existing manner of use and place of use are described as being irrigation and domestic purposes located within portions of Section 13, T.21S., R.53E., M.D.B.&M.¹

II.

Application 73553 was timely protested by Allison Urbon, on the following grounds:¹

Applicant's request has potential to dry up the wells of numerous residences to the south and west of his development, in areas that previously would not have had problems based on the existing point of water withdrawal for the property. Historically, the point of withdrawal for this property has been located nearly $\frac{1}{2}$ mile further north and east of these residences. The proposed point of diversion is $\frac{1}{2}$ mile (significantly) closer to the south and west side of the subject property, nearer where my husband and I currently live, and we have significant concerns about additional water table drawdown in the vicinity and potential dry well and subsequent financial impacts to ourselves and our neighbors. Our well is currently drilled to a depth of 140 feet, with a static water level of 54 feet below ground surface at the time of

¹ File No. 73553, official records in the Office of the State Engineer.

drilling. To date, there has been no significant (high density) development in our area. This point of diversion would withdraw water for 833 residences from a single location within about ½ mile of our home and water supply well. Because the point of withdrawal for this significant sized property and water source was not close to our property when we purchased, related drawdown issues were not at issue when we purchased our property and drilled our well. Should this point of diversion be granted, it should only be done so under terms that would hold Concordia liable for all costs related to re-establishing a secure water supply well system for each household to the south and west of the developer's property if their existing well goes dry as a result of a dropping water table for a period not less than and including 1 year after the developer's subdivision has been completely inhabited, as this is when the impact from the development would be fully realized.

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 73553 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.

A review of records on file in the Office of the State Engineer shows that the Protestant is the owner of a domestic well that serves a single-family dwelling located approximately 3,200 feet southwest of the proposed point of diversion under Application 73553.² The use of the domestic well is exempted from the requirement of obtaining a water right permit under Nevada water law.³ However, it is the policy of the State to recognize the importance of domestic wells as appurtenances to private homes, and to create a protectible interest in such wells, and to protect their water supply from unreasonable adverse effects, which are caused by municipal, quasi-municipal or industrial uses.⁴ In consideration of water right applications, the State Engineer must take into account whether the proposed change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024.⁵

The State Engineer finds that the Protestant has an existing domestic well and has a protectible interest in said domestic well.

² See, Memorandum, *Potential Impact from Pumping: Application 73553*, August 10, 2006, File No. 73553, official record in the Office of the State Engineer.

³ NRS §§ 534.013 and 534.180.

⁴ NRS § 533.024 (2).

⁵ NRS § 533.370 (3).

III.

Application 73553 proposes to change an existing water right from irrigation purposes to quasi-municipal and domestic purposes. Applications of this nature are carefully scrutinized on a case-by-case basis to determine if only the consumptive use portion of the irrigation water right can be transferred so that the change does not conflict with existing rights.

By allowing only the transfer of the consumptive use portion of the existing base right permit, the State Engineer finds that the approval of Application 73553 will not conflict with existing water rights within the Pahrump Valley Hydrographic Basin. The State Engineer further finds that Application 73553, if approved, can transfer only the consumptive use portion of Permit 19872, Certificate 5976, with this amount calculated to be 3.5 acre-feet per acre, but not to exceed 345.28 afa.

IV.

A review of the protest shows the Protestant has essentially requested that the Applicant be required to mitigate should the Protestant's existing domestic well go dry as a result of an unreasonable lowering of the water table.¹ In order to scientifically evaluate the concerns of the Protestant, the Hydrology Section of the Office of the State Engineer conducted an analysis of potential impact on groundwater levels to predict the possible impacts to the Protestant's existing domestic well from the potential pumping of 345.28 afa at the proposed point of diversion, the consumptive use portion of water requested for change under Application 73553. It should be noted that the aquifer properties in the area are not well known and uncertainty exists in the estimation of aquifer storativity and transmissivity. Therefore, two different model scenarios were used, where scenario 1 represents a medium-hard clay aquifer and scenario 2 represents a fissured/jointed rock aquifer. Storativity values for each scenario were based on reported subsurface aquifer properties, and respective transmissivity values were calculated using pump test information contained within Well Driller's Reports on file in the Office of the State Engineer.⁶ Using scenario 1, the net lowering of the groundwater level at the Protestant's domestic well is estimated at 7.18 feet. Under scenario 2, the net lowering of the groundwater level at the Protestant's domestic well is estimated at 4.98 feet.²

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

⁶ Well Log Nos. 54665 and 7490, official records in the Office of the State Engineer.

lowered at the point of diversion of a prior appropriator, so long as protectible interests in existing domestic wells and the rights of existing appropriators can be satisfied.⁷

The State Engineer finds that under both scenarios there will be a minor increase in impact to the Protestant's domestic well from the proposed change of 345.28 afa under Application 73553. The State Engineer further finds that the Protestant's protectible interest in her domestic well can be protected through monitoring and, if necessary, mitigation.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁹

- 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.

Application 73553 requests a transfer of a portion of an existing water right permit, under which water has already been appropriated. Since the subject application does not seek additional water from the groundwater basin, the State Engineer concludes the issue of unappropriated water does not come into consideration.

IV.

The groundwater model computation shows a maximum potential net drawdown of 7.18 feet and 4.98 feet in the Protestant's domestic well under two different scenarios. Based on this analysis, the State Engineer concludes the protectible interests in the Protestant's existing domestic well as set forth in NRS § 533.024 can be preserved by requiring monitoring and, if necessary, mitigation.

⁷ NRS § 534.110 (5).

⁸ NRS chapters 533 and 534.

⁹ NRS § 533.370 (5).

V.

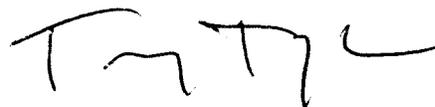
Application 73553 was filed to change existing groundwater rights within the Pahrump Valley Hydrographic Basin. Based on the record of evidence available, the State Engineer concludes that the approval of Application 73553, for its consumptive use portion only, will not conflict with existing rights nor threaten to prove detrimental to the public interest.

RULING

The protest to Application 73553 is hereby overruled in part and granted in part and the application is approved subject to:

1. Existing water rights.
2. Payment of the statutory permit fee.
3. Permit terms and conditions that limit its annual duty of water to its consumptive use portion, being 345.28 acre-feet, of the 380.10 acre-feet portion of the base right. The remainder, 34.82 acre-feet, remains in the groundwater source.
4. The Permittee or any assignee shall report to the State Engineer on a quarterly basis the effect of pumping the well under this permit on other wells that are located within 2,500 feet of the well under this permit; and
5. Any pumping of water under this permit may be limited or prohibited to prevent any unreasonable adverse effects on any existing domestic well located within 2,500 feet of the well under this permit, unless the holder of this permit and the owner of the domestic well have agreed to alternative measures that mitigate adverse effects.
5. If unreasonable impacts to the Protestant's existing domestic well are demonstrated, the Permittee or any assignee will be required to mitigate the same.
6. The State Engineer reserves the right to evaluate and amend the requirements for monitoring, as he deems necessary to protect the health of the water resources of Pahrump Valley, Nevada.
7. Any water under this permit that is cancelled, withdrawn or otherwise not placed to beneficial use shall revert back to the groundwater source within Pahrump Valley and not back to the base water right.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/BM/jm

Dated this 11th day of
August, 2006.