

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

IN THE MATTER OF PROTESTED )  
APPLICATION 73694 FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF )  
AN UNDERGROUND SOURCE WITHIN )  
THE BEDELL FLAT HYDROGRAPHIC )  
BASIN (94), WASHOE COUNTY, NEVADA. )

**RULING**

**#5673**

**GENERAL**

**I.**

Application 73694 was filed on January 11, 2006, by Sierra Nevada Teen Ranch to appropriate 0.00949 cubic feet per second, not to exceed 2.2386 million gallons annually, of water from an underground source for commercial and domestic purposes. The proposed place of use is described as being located within Lot 1 of Section 4, T.23N., R.19E., M.D.B.&M. The proposed point of diversion is also described as being located within Lot 1 of said Section 4.<sup>1</sup>

**II.**

Application 73694 was timely protested by Washoe County on the following grounds:<sup>1</sup>

Application 73694 is requesting a new appropriation of 2.2386 MGA of ground water from the Bedell Flat Hydrographic Basin.

State Engineer's Ruling # 5429, dated October 14, 2004 grants any and all remaining unappropriated ground water from this basin to the applicant, Intermountain Water Supply, Ltd, under application number 66873. This ruling is currently under appeal and reconsideration by the State Engineer's office, which mat [sic] result in an increase in the amount of appropriation by Intermountain.

NRS 533.370 states that:

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

- 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 the 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.*

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<sup>1</sup> File No. 73694, official records in the Office of the State Engineer.

Therefore, based on the above there is no unappropriated water in the proposed source, and as such this application should be denied.

### **FINDINGS OF FACT**

#### **I.**

Nevada Revised Statute § 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 73694 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 73694 identified the manner of use as commercial and domestic. The remarks section further identifies the manner of use as a residential facility for at-risk youths to house 40 to 50 residents at 100% capacity. Additional information provided by the Applicant, shows that the project is classified by the Internal Revenue Code under section 501(c)(3) as a non-profit organization exempt from federal income tax.<sup>1</sup>

The State Engineer finds that while the application identifies the manner of use as commercial and domestic, the actual use is more in the nature of quasi-municipal use.

#### **III.**

The protest indicates that there is no additional water available for appropriation due to State Engineer's Ruling No. 5429. Under State Engineer's Ruling No. 5429, Application 66873 requested an appropriation of 1,000 acre-feet annually (afa) of water from the Bedell Flat Hydrographic Basin. The State Engineer found that the estimated perennial yield of the basin was 300 afa and existing commitments in the form of water right permits, certificates and domestic wells allowed Application 66873 to be approved at a reduced duty of only 144.2 afa.<sup>2</sup> It is the Protestant's contention that due to this ruling no further appropriation of water can occur in the Bedell Flat Hydrographic Basin. The Protestant also notes that the Applicant under Application 66873 appealed State Engineer's Ruling No. 5429 and the matter was remanded to the State Engineer for further determination.

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<sup>2</sup> State Engineer's Ruling No. 5429, official record in the Office of the State Engineer.

Application 66873 was filed for a quantity of water that was much greater than the estimated perennial yield of the Bedell Flat Hydrographic Basin. A ruling was issued to approve the application for a reduced amount of water equal to the estimated amount of water available in the groundwater basin. However, it was not the intent of the State Engineer to disallow all future groundwater development in the Bedell Flat Hydrographic Basin. An examination of the records of the Office of the State Engineer shows the State Engineer does issue water right permits for preferred uses, on a restricted basis, for reduced amounts of water in groundwater basins where large appropriations of water have been denied on the grounds of water availability. In this case, Application 73694 requests an appropriation of 6.87 afa of water. This impact is further reduced when considering that the potential for a domestic well at the proposed place of use was accounted for in State Engineer's Ruling No. 5429 and any potential domestic well will now be replaced by the proposed residential facility for at-risk youth.

Additional information submitted by the Applicant shows an estimated 2.87 acre-feet for indoor use, 2.00 acre-feet for landscaping and 2.00 acre-feet for other outside water usage. Based on these estimates, and the restricted water availability in the Bedell Flat Hydrographic Basin, the State Engineer finds that Application 73694 can only be considered for a maximum of 4,000 gpd or 4.48 afa.

The State Engineer further finds the approval of Application 73694 for the reduced amount of 4.48 afa would not alter the groundwater basin's recharge-discharge equation or interfere with existing rights nor be detrimental to the public interest.

#### IV.

Application 73694, if approved and fully utilized, would appropriate about 4.48 afa of ground water within the Bedell Flat Hydrographic Basin. As a comparison, the maximum duty for a domestic well in this area is 2.02 afa for which no permit is required.<sup>3</sup> Nevada water law does not prevent the granting of permits to applicants later in time on the grounds 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 the rights of existing appropriators can be satisfied.

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<sup>3</sup> NRS § 534.180.

The State Engineer finds that the quantity of water requested in this application is minimal and the approval of such a small quantity would not impair existing groundwater rights within the Bedell Flat Hydrographic Basin.

### CONCLUSIONS

#### I.

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

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>5</sup>

- 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 that the amount of water necessary for the proposed project is minimal and will not cause an unreasonable drawdown in any nearby permitted or domestic wells.

#### IV.

Based on the record of evidence available, the State Engineer concludes that approval of Application 73694 will not threaten to prove detrimental to the public interest.

#### V.

The State Engineer concludes the Protestant's assertion that no further ground water development can occur in the Bedell Flat Hydrographic Basin due to State Engineer's Ruling No. 5429 is incorrect and therefore, the protest claim may be overruled.

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<sup>4</sup> NRS chapters 533 and 534.

<sup>5</sup> NRS § 533.370 (5).

**RULING**

The protest to Application 73694 is overruled and Application 73694 is hereby approved at a reduced duty of 4.48 afa subject to existing rights and payment of the statutory permit fee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T T T', with a horizontal line above it and a flourish to the right.

TRACY TAYLOR, P.E.  
State Engineer

TT/TW/jm

Dated this 15th day of

November, 2006.