

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

IN THE MATTER OF PROTESTED )  
APPLICATION 75956 FILED TO CHANGE )  
THE POINT OF DIVERSION, PLACE AND )  
MANNER OF USE OF THE PUBLIC )  
WATERS OF AN UNDERGROUND )  
SOURCE PREVIOUSLY APPROPRIATED )  
UNDER PERMIT 44203, WITHIN THE )  
FISH LAKE VALLEY HYDROGRAPHIC )  
BASIN (117), ESMERALDA COUNTY, )  
NEVADA. )

**RULING**

**#5943**

**GENERAL**

**I.**

Application 75956 was filed on June 27, 2007, by Nevada Land and Ranches, LLC., to change the point of diversion, place and manner of use of 0.0873 cubic feet per second (cfs), not to exceed 5.26 acre-feet annually (afa), of underground water previously appropriated under Permit 44203 for quasi-municipal purposes. The proposed place of use is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 29 and the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, T.1S., R.35E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 29, T.1S., R.35E., M.D.B.&M.<sup>1</sup>

**II.**

Application 75956 was timely protested by Dan J. Peterson, on the following grounds:

- First;            I am NOT aware of any “commercial” source of underground water in Section 28.
- Second;         Locating a municipal water source adjacent to my existing domestic water will seriously impact my ability to use my domestic well.
- Third;            Pumping 56,420 gallons per day for a domestic water system seriously impacts not only my domestic water but the adjacent water for irrigation.<sup>1</sup>

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<sup>1</sup> File No. 75956, official records in the Office of the State Engineer.

## **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 75956 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.**

Permit 44203, which was issued for commercial purposes and is the base right for Application 75956, was the subject of Ruling No. 5480 that overruled a similar protest by D.J. Peterson and others. Ruling No. 5480 extensively examined all the issues related to the granting of a new appropriation. Since Application 75956 intends to only move the point of diversion approximately 300 feet to the northwest of the currently approved point of diversion; it is given that the conclusions of Ruling No. 5480 should remain applicable. The pertinent conclusions of Ruling No. 5480 are:

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.

The State Engineer concludes Application 44203 will not conflict with protectible interests in existing domestic wells as set forth in NRS § 533.024, NRS § 534.110, or NRS § 533.370.

The State Engineer concludes that the potential impact to Chiatovich Creek is minimal, if any, and therefore, approval of Application 44203 will not impair existing rights on the creek.

The State Engineer concludes there is unappropriated water at the proposed source sufficient to satisfy the diminutive requirements of Application 44203.

The State Engineer finds that Ruling No. 5480 is pertinent to any decision regarding the approval or disapproval of Application 75956.

### III.

Application 75956, if approved and fully utilized, would divert about 5.26 afa of ground water. As a comparison, the maximum duty for a domestic well is 2.00 afa. The amount requested in Application 75856 is about two and one-half times the quantity of water allowed for one domestic well for which no permit is required.<sup>2</sup> In the remarks section of Application 75956, the Applicant states, "Two (2) domestic units are proposed to be served." 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. 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 ground-water rights within the Fish Lake Valley Hydrographic Basin.

### IV.

The proposed point of diversion under Application 75956 is approximately 300 feet from Chiatovich Creek. When a well is located within ¼ mile of a surface water source, such as Chiatovich Creek (i.e. a perennial stream), well drilling regulations require that an annular seal be placed to a depth of at least 100 feet.<sup>3</sup> One aspect of this requirement is to force any pumping from this well to occur at a depth that minimizes the connectivity to the surface-water source. If the water table is not connected to the stream, that is, if the water table lies 30 to 50 feet below the streambed, then pumping will not impact the stream flow because the stream is already losing at its maximum rate. In the case of Application 44203 (and likewise Application 75956), there may still be some connectivity between the aquifer and the stream, but in the absence of any detailed water level and aquifer data, the magnitude of impact is difficult to determine. If there were complete connectivity between the pumping of the subject well and the stream, the

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<sup>2</sup> NRS § 534.180.

<sup>3</sup> NAC § 534.390.

ultimate effect would be a reduction in stream flow by an amount equal to the average pumping rate.<sup>4</sup>

The average flow rate of Chiatovich Creek from 1961 to 1981 was 8.9 cfs or 6,400 afa. The maximum potential water that could be pumped under Application 75956 is 5.26 afa or less than one-hundredth of one percent (about 0.08218%) of the total average historical flow in Chiatovich Creek. This illustrates the maximum possible impact on the stream assuming 100 percent connectivity and demonstrates that the maximum possible impact would be minor. As indicated above, the actual magnitude of the impact cannot be fully determined with the data available. Therefore, the impact on Chiatovich Creek can be summarized as ranging from 'no impact' to 'minor impact'.

The State Engineer finds the projected impact of pumping the proposed well would be minor if any and will not conflict with existing water rights on Chiatovich Creek.

#### V.

In reviewing the Protestants protests, it becomes clear that Mr. Peterson has some significant misconceptions. These are addressed in order below.

1. Permit 44203, the base right for change Application 75956, is a commercial water right that the protestant also protested.
2. Application 75956 is not for municipal purposes, it is for quasi-municipal purposes for two domestic dwellings which, when permitted, will be allowed the equivalent of 2½ domestic wells.
3. Expanding 5.26 acre-feet annually, the amount under Application 75956, to a daily pumpage equates to approximately 4,869 gallons per day, and not 56,420 gallons per day.

The State Engineer finds that the Protestant has stated misconceptions as the basis of his protest; and that when these misconceptions are corrected, the protest is without merit.

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<sup>4</sup> See, Memorandum from Staff Hydrogeologist, 44203 – *Impact of Well Pumping on Surface Water Rights*, December 14, 2004, File No. 44203, official records in the Office of the State Engineer.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

### II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>6</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.

The State Engineer concludes that the potential impact to Chiatovich Creek is minimal, if any, and therefore, approval of Application 75956 will not impair existing rights on the creek.

### V.

The State Engineer concludes the protest of Application 75956 is without merit.

### VI.

Based on the record of evidence available, the State Engineer concludes that approval of Application 75956 will not threaten to prove detrimental to the public interest.

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<sup>5</sup> NRS chapters 533 and 534.

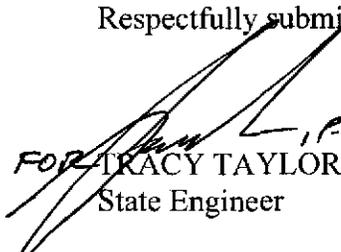
<sup>6</sup> NRS § 533.370 (5).

**RULING**

The protest to Application 75956 is hereby overruled and the application is approved subject to:

1. Existing rights and payment of the statutory permit fees, and
2. Compliance with well drilling regulations that require an annular seal be placed to a depth of 100 feet for wells within ¼ mile of a stream.

Respectfully submitted,

  
FOR TRACY TAYLOR, P.E.  
State Engineer

TT/WHR/jm

Dated this 11th day of

February, 2009.