

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

IN THE MATTER OF APPLICATION 62615)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE COAL VALLEY HYDROGRAPHIC)
BASIN (171), LINCOLN COUNTY,)
NEVADA.)

RULING

4956

GENERAL

I.

Application 62615 was filed on November 22, 1996, by the United States Bureau of Land Management, as agent for Robert Steele, Thomas Steele, Charles Wadsworth, Monte Wadsworth, Nolan Shumway, Joe Higbee, Varlin Higbee, Stuart Twitchell, Gracian Uhalde, Bertrand Paris and Sons and Connie Wright to appropriate 0.1448 cubic feet per second (cfs), not to exceed 16 acre-feet per year, of underground water for livestock and wildlife purposes within the SW $\frac{1}{4}$ of Section 21, T.1N., R.59E., M.D.B.&M. The proposed point of diversion is described as being the Baseline Canyon Federal Unit #2 well, which is located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 21. Information contained within the remarks section of Application 62615 indicates that the water will be utilized by 1,380 head of cattle, 5,715 sheep, and 25 antelope.¹

II.

Application 62615 was timely protested by the United States Department of the Interior, National Park Service (NPS), on the following grounds:¹

- a) The public interest would not be served if the water resources of the Lake Mead National Recreation Area are diminished or impaired as a result of this appropriation in combination with proposed and existing appropriation;

¹ File No. 62615, official records in the office of the State Engineer.

- b) This application if approved, in combination with existing and proposed appropriations, will reduce the flow of the Muddy River, will impact springs within the Lake Mead Recreation Area and such impacts would not be in the public interest and will impair the NPS's claimed implied federal reserved water rights for lands within the Lake Mead National Recreation Area;
- c) Nevada State appropriative water rights issued for the Lake Mead National Recreation Area will be impaired by this appropriation in combination with other existing and proposed rights; and
- d) The proposed appropriation will result in a decrease in the discharge to the Muddy River which is fully appropriated.

The NPS stated in its protest that it would not introduce facts or testimony which would differ from that offered during a previous hearing in the matter of protested Applications 55450 and 58269. The State Engineer was also informed that the NPS would not make an appearance if a hearing was set for taking testimony and evidence with regard to Application 62615.¹

III.

By letter dated November 6, 1998, the Bureau of Land Management (BLM) acting as agent for the applicants reduced the annual amount of water requested for appropriation under Application 62615 to 6.0 acre-feet and indicated the water was to be use for 335 cattle, 1,000 sheep and 25 antelope.¹ By letter received in the office of the State Engineer on May 18, 2000, the BLM, acting as agent, requested the State Engineer exclude wildlife and antelope from the application.

FINDINGS OF FACT

I.

The NPS indicated in its protest that it would like the State Engineer to take administrative notice of the testimony of the NPS in the 1995 administrative hearing in the matter of Applications 55450 and 58269. The State Engineer finds that applicants under Application 62615 were not a party to that hearing, therefore, they had no opportunity to cross-examine as to any testimony or evidence that the NPS presented.

II.

The Nevada Legislature has determined it is within the discretion of the State Engineer whether or not to hold a hearing on a protested application.² The State Engineer finds that a hearing is not necessary with regard to Application 62615 since the NPS has already indicated it would not attend any hearing if scheduled.

III.

Application 62615 requests an appropriation of underground water, which would not exceed 6.0 acre-feet per year. The point of diversion and place of use requested under Application 62615 are positioned more than ninety miles north of the closest portion of the Lake Mead National Recreation Area.³ There are no permitted or pending water rights within at least a three mile radius from the proposed point of diversion under Application 62615.⁴ The State Engineer finds that the quantity of water requested under Application 62615 is minimal and the distance great enough that the chances of interference with the Muddy River Springs, the flow of the Muddy River, or Nevada State appropriative rights issued for the Lake Mead Recreational Area and the Coal Valley Groundwater Basin would be nil.

² NRS § 533.365(3).

³ BLM 1:500000, State of Nevada Land Status Map, 1990.

⁴ Nevada Division of Water Resources Water Rights Database, Basin 171, April 3, 2000, official records in the office of the State Engineer.

IV.

The perennial yield of a groundwater reservoir may be defined as the maximum amount of ground water that can be salvaged each year over the long term without depleting the groundwater reservoir. Perennial yield is ultimately limited to the maximum amount of natural discharge that can be salvaged for beneficial use.⁵ An analysis of the water resources of the Coal Valley Groundwater Basin is found in the United States Geological Survey's (USGS), Open File Report 78-768. The USGS estimates that the perennial yield of the Coal Valley Groundwater Basin is 6,000 acre-feet.⁶ The committed groundwater resource in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Coal Valley Groundwater Basin is currently 24.86 acre feet.⁷ The State Engineer finds that the committed resource of the Coal Valley Groundwater Basin does not exceed the current estimate of the groundwater basin's perennial yield.

V.

On October 17, 1989, the Las Vegas Valley Water District filed Applications 53956, 53957, 53958 and 53959, which requested large appropriations of underground water from the Coal Valley Groundwater Basin. Based upon the date of its filing within the office of the State Engineer, Application 62615 was assigned a priority date that is junior to Applications 53956, 53957, 53958 and 53959. The only other pending application that holds a priority date senior to Application 62615 is in the name of several of these applicants for stock watering purposes. The State Engineer finds that the appropriation of an additional 6.0

⁵ State Engineer's Office, Water for Nevada, State of Nevada Water Planning Report No. 3, p. 13, October 1971.

⁶ Nowlin, Jon, Ground-water Quality in Nevada - A Proposed Monitoring Program, Open File Report 78-768, U.S. Department of the Interior, Geological Survey, p. 199.

⁷ Nevada Division of Water Resources Hydrologic Basin Abstract, Basin 171, Summary of Active Water Rights, April 3, 2000, official records in the office of the State Engineer.

acre feet of water for stockwatering purposes under a junior priority would not alter the groundwater basin's recharge-discharge equation to a degree that would jeopardize any consideration by the State Engineer of existing requests for appropriations of ground water from the Coal Valley Groundwater Basin.

VI.

Under the provisions of NRS § 533.503, the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock on public lands unless the applicant for the permit is legally entitled to place the livestock on the public lands for which the permit is sought. Information contained within the application file under Application 54216 indicates several of the multiple applicants listed under Application 62615 are recognized by the BLM as the authorized federal grazing permittees for the Coal Valley Allotment and the BLM is merely acting as agent for the applicants. As to the other applicants, if the BLM is acting as their agent the State Engineer must assume the BLM recognizes them as being legally entitled to place livestock on the relevant public land. The State Engineer finds that the approval of Application 62615 would not violate the statutory guidelines established under NRS § 533.503.

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

⁸ NRS chapters 533 and 534.

⁹ NRS § 533.370(3).

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

The committed resource of the Coal Valley Groundwater Basin currently does not exceed the estimate of the groundwater basin's perennial yield. The State Engineer concludes that there is sufficient unappropriated underground water available within the Coal Valley Groundwater Basin to satisfy the 6.0 acre feet of water per year requested under Application 62615.

IV.

Application 62615 requests a modest appropriation of underground water from a point of diversion that is far removed from those few existing well sites that appropriate water from the Coal Valley Groundwater Basin. In addition, the proposed point of diversion under Application 62615 is located a great distance from the protestant's areas of concern. The State Engineer concludes that the approval of the 6.0 acre feet of underground water requested under Application 62615 will not have an adverse effect upon existing water rights or the areas of interest defined within the NPS's protest.

V.

The State Engineer concludes that the approval of a stock watering application that requests a small appropriation of water for use by parties that are legally entitled to place livestock upon the public lands would not threaten to prove detrimental to the public interest.

RULING

The protest to Application 62615 is hereby overruled and Application 62615 is approved subject to existing rights and the payment of the statutory filing fees.

Respectfully submitted,



HUGH RICCI, P.E.

State Engineer

HR/MDB/cl

Dated this 9th day of
August, 2000.