

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

IN THE MATTER OF APPLICATIONS 65686, 65687,)
AND 65688 FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF THE)
UNDERGROUND WATERS HERETOFORE)
APPROPRIATED WITHIN THE MASON VALLEY)
HYDROGRAPHIC BASIN (108), LYON COUNTY, NEVADA.)

RULING

4968

GENERAL

I.

Application 65686 was filed on December 3, 1999, by Thomas P. and Volina L. Connolly to change 0.87 cubic feet per second (cfs), 381.68 acre-feet annually, a portion of underground water heretofore appropriated within the Mason Valley Groundwater Basin under Permit 19068, Certificate 6463. The proposed manner of use is for irrigation and domestic purposes on 95.42 acres within Sections 2 and 3, T.13N., R.25E., and Sections 33 and 34, T.14N., R.25E., M.D.B.& M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 34.¹

II.

Application 65687 was filed on December 3, 1999, by Thomas P. and Volina L. Connolly to change 1.12 cfs, 493.80 acre-feet annually, a portion of underground water heretofore appropriated within the Mason Valley Groundwater Basin under Permit 19068, Certificate 6463. The proposed manner of use is for irrigation and domestic purposes on 123.45 acres within Section 9 and Section 10, T.12N., R.25E., M.D.B.& M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 10.²

III.

Application 65688 was filed on December 3, 1999, by Thomas P. and Volina L. Connolly to change 1.48 cfs, 656.52 acre-feet annually, a portion of underground water heretofore appropriated within the Mason Valley Groundwater Basin under Permit 19068, Certificate 6463. The proposed manner of use is for irrigation and domestic purposes on 164.13 acres within Section 15, T.12N., R.25E., M.D.B.& M. The proposed

¹ File No. 65686, official records in the office of the State Engineer.

² File No. 65687, official records in the office of the State Engineer.

point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 15, T.13N., R.25E., M.D.B.&M..³

IV.

Certificate 6463 issued on January 17, 1968, for Permit 19068, allows for the diversion of 6.0 cfs, not to exceed 2,652.0 acre-feet annually of underground water for irrigation and domestic use on 663 acres of land located within Section 13 and Section 24, T.13N., R.25E., M.D.B.&M., and Section 18 and Section 19, T.13N., R.26E., M.D.B.& M. Thomas P. and Volina L. Connolly own 280 acres under Certificate 6463 within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 13, T.13N., R.25E., and the NW $\frac{1}{4}$ and the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 18, T.13N., R.26E., M.D.B.& M. The remaining 383 acres are owned by John A. and Nora L. Connolly.⁴ The part of Certificate 6463 being stripped of water rights to support Applications 65686, 65687, and 65688 is 383 acres within the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 13, T.13N., R.25E., M.D.B.&M., and the W $\frac{1}{2}$ of Section 18, T.13N., R.26E., M.D.B.& M., and are partly owned by Thomas P. and Volina L. Connolly, 280 acres, and partly owned by John A. and Nora L. Connolly (143 acres).⁵ The 383 acres being stripped are supplemental to 380.74 acres under Permit 18676, Certificate 5411.^{4,6}

Certificate 5411, issued November 15, 1962, for Permit 18676 allows for the diversion of 3.0 cfs, 1,463.45 acre-feet seasonally, of underground water for irrigation of 434 acres within the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 13, T.13N., R.25E., and the W $\frac{1}{2}$ of Section 18, T.13N., R.26E., M.D.B.& M. The duty is 3.37 acre-feet per acre. Permit 59091 removed 8.96 acre-feet of water for a feedlot located on the same 2.26 acres stripped from Certificate 5411. G Lazy B Partnership is the current owner of record in the office of the State Engineer of Certificate 5411.⁶

FINDINGS OF FACT

I.

Applications 65686, 65687, and 65688 propose to change the point of diversion and place of use of 383 acres irrigated under Permit 19068, Certificate 6463, in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 13, T.13N., R.25E., M.D.B.&M., and the W $\frac{1}{2}$ of Section 18, T.13N.,

³ File No. 65688, official records in the office of the State Engineer.

⁴ File No. 19068, official records in the office of the State Engineer.

⁵ Document No. 32602, File No. 19068, and Document Nos. 51452, 152555, and 152556 File No. 18676.

⁶ File No. 18676, official records in the office of the State Engineer.

R.26E., M.D.B.&M. Certificate 6463 was issued with the condition that, "This certificate is issued subject to the terms of the permit and with the understanding that the total duty of water for the land under this certificate shall not exceed 4.0 ac. ft. per acre, annually from all sources."⁴

Certificate 5411 was issued with the condition that "This certificate is issued subject to the terms of the permit and with the understanding that the total duty of water shall not exceed 4.0 acre feet per acre per season from all sources."⁶ There are 380.74 acres irrigated under Permit 18676, Certificate 5411, in the same E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 13 and W $\frac{1}{2}$ of Section 18. The State Engineer finds that Certificates 5411 and 6463 are supplemental on 380.74 acres, which means that the 380.74 can be irrigated with underground water from either or both certificates.

The State Engineer finds that no matter what supplemental sources are used to irrigate the 380.74 acres, the total duty of water shall not exceed 4.0 acre-feet per acre. If supplemental sources are allowed to be separated and changed by these applications, then the land under irrigation and the amount of water used for irrigation in Mason Valley, would increase by 380.74 acres, and 1,523 acre-feet, without appropriation of additional water and thereby circumventing limits placed on new appropriations in Mason Valley by State Engineer's Order No. 1125.⁷ The State Engineer finds that increasing the land under irrigation and the amount of water used for irrigation without appropriation of additional water would conflict with existing rights and would threaten to prove detrimental to the public interest.

II.

The State Engineer's Summary of Ownership for Permit 19068, Certificate 6463, shows that Thomas P. and Volina L. Connolly have ownership of only 280 acres of Certificate 6463. Furthermore, title documents show that they own only 240 acres within the 383 acres that are proposed to be changed.⁴ The State Engineer finds that to approve applications to change water rights that the applicants do not own would conflict with existing rights and threaten to prove detrimental to the public interest.

⁷ State Engineer's Order No. 1125, dated February 4, 1997, official records in the office of the State Engineer.

III.

By letter dated April 4, 2000, the applicants and their agent were advised of the supplemental nature of Permit 18676, Certificate 5411, with Permit 19068, Certificate 6463, the Permit and Certificate that forms the basis for change Applications 65686, 65687, and 65688. The applicants and their agent were requested to propose ways to resolve the supplemental condition. The State Engineer finds that no proposal was received from the applicants or their agent.⁴

By certified mail dated June 5, 2000, the applicants and their agent were again advised of the supplemental nature of Permit 18676, Certificate 5411, with Permit 19068, Certificate 6463.⁴ The applicants and their agent were requested to submit proposals to resolve the supplemental conditions by July 14, 2000. The return receipts for the certified mail show the letter was received by the agent on June 7, 2000, and by the applicants on June 8, 2000. The State Engineer finds that no response to the certified mail has been received from the applicants or their agent.^{1,2,3,4}

CONCLUSIONS

I.

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

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.⁹

III.

The State Engineer is prohibited by law from granting a permit for an application to change the public waters where:¹⁰

- A. the proposed use conflicts with existing rights; or
- B. the proposed use threatens to prove detrimental to the public interest.

⁸ NRS chapters 533 and 534.

⁹ NRS § 533.375.

¹⁰ NRS § 533.370(3).

IV.

Permit 19068, Certificate 6463, and Permit 18676, Certificate 5411, were issued in such a manner that 380.4 acres under each certificate were supplemental and could be irrigated from either permit. Each Certificate contains a condition stating that the total duty of water for the land from all sources shall not exceed 4.0 acre-feet per acre. Applications 65686, 65687, and 65688 propose to change 383 acres of Permit 19068, Certificate 6463, with a duty of 4.0 acre-feet per acre to new places of use, leaving Permit 18676, Certificate 5411, for the irrigation of the original place of use. If supplemental underground water rights could be separated and one water right changed to a new place of use, the land under irrigation and the amount of water used for irrigation would increase without appropriation of additional water. The State Engineer concludes that increasing the land under irrigation and the amount of water used for irrigation without appropriation of additional water would conflict with existing rights and would threaten to prove detrimental to the public interest.

V.

The Summary of Ownership for Permit 19068, Certificate 6463, shows that the applicants under Applications 65686, 65687, and 65688, Thomas P. and Volina L. Connolly, have ownership of 240 acres of the 383 acres that are proposed to be changed. The State Engineer concludes that to approve applications to change water rights that the applicants do not own would conflict with existing rights and would threaten to prove detrimental to the public interest.

VI.

The applicants under Applications 65686, 65687, and 65688 were properly notified by certified mail and requested to propose ways to solve the supplemental condition between Permit 19068, Certificate 6463, and Permit 18676, Certificate 5411. The applicants failed to respond to the request to submit such a proposal or resolution. The State Engineer concludes that sufficient information is not available to properly guard the public interest and to issue permits under the applications would threaten to prove detrimental to the public interest.

RULING

Applications 65686, 65687, and 65688 are hereby denied on the grounds that to issue permits for these applications would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,


HUGH RICCI, P.E.

State Engineer

HR/CAB/cl

Dated this 28th day of
September, 2000.