

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

IN THE MATTER OF PROTESTED)
APPLICATION 69135 FILED TO CHANGE)
THE POINT OF DIVERSION AND PLACE OF)
USE OF A PORTION OF THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
PREVIOUSLY APPROPRIATED UNDER)
PERMIT 18976, CERTIFICATE 5975 WITHIN)
THE CARSON VALLEY HYDROGRAPHIC)
BASIN (105), DOUGLAS COUNTY, NEVADA.)

RULING

#5441

GENERAL

I.

Application 69135 was filed on September 6, 2002, by Sierra Nevada SW Enterprises to change the point of diversion and place of use of 2.3 cubic feet per second (cfs) a portion of underground water previously permitted for appropriation under Permit 18976, Certificate 5975. The proposed manner of use and place of use is described on the application as being for irrigation and domestic purposes within portions of the NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, of Section 9, and portions of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T.12N., R.20E., M.D.B.&M. The changes requested by Application 69135, if approved, would transfer the applicant's existing point of diversion from the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T.12N., R.20E., M.D.B.&M. to a point, which is located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T.12N, R.20E., M.D.B.&M. The existing place of use of the land to be stripped under Application 69135 is described as being located within portions of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, of Section 3, and portions of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T.12N., R.20E., M.D.B.&M.¹

II.

Certificate 5975 was issued on February 1, 1966, under Permit 18976, to Stoddard and Jewel Jacobsen for the diversion of 4.5 cfs for irrigation and domestic purposes. The existing point of diversion and place of use are described above.²

¹ File No. 69135, official records in the Office of the State Engineer.

² File No. 18976, official records in the Office of the State Engineer.

III.

Application 69135 was timely protested by Gardnerville Ranchos General Improvement District, on the following grounds.¹

The Gardnerville Ranchos G.I.D. has a production well (GRGID Well #8) within the vicinity of the proposed change in point of diversion. The District is concerned that the new point of diversion may lower the pumping level in the District's wells, especially during irrigation season. GRGID Well #8 occasionally reaches the low-pumping elevation during high production intervals.

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 69135, 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 show the protestant is the owner of a production well, GRGID Well No. 8, that serves as a municipal supply well for the Gardnerville Ranchos GID. In consideration of a water right application, the State Engineer must take into account, among other things, the effect of the application on existing rights. 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 lowered at the point of diversion of a prior appropriator, so long as the rights of existing appropriators can be satisfied.³

On November 3, 2003, the applicant, through its agent, submitted additional information in the form of an analysis of the potential impacts of Application 69135 on GRGID Well No. 8. The analysis estimates the drawdown effect that the proposed underground well would have at the protestant's well. The proposed well would be approximately 1,289 feet from the protestant's well. At that distance, for continuous

³ NRS § 534.110 (5).

duration pumping for periods of 6 months, one year, five years and ten years, the calculated values of the water level drawdown ranged from 65 feet to 97 feet.⁴

The applicant's agent concludes that the estimated drawdown of less than 100 feet could be easily accommodated by the protestant's well since the static water level when the well was constructed was 46 feet and the well was drilled to 500 feet. However, this conclusion fails to take into account the drawdown at GRGID No. 8 due to pumping its existing rights. Under existing rights, the GRGID is allowed to pump approximately 1,225 gallons per minute (gpm) at GRGID No. 8 well.⁵ In examining the last page of the analysis provided by the applicant's agent, titled *Spreadsheet for Calculation of Drawdown Using the Theis Equation*, the drawdown below static water level within a radius of one foot of the proposed well is 295.49 feet. The flow rate used in the calculation was 1,050 gpm. Obviously, if this same analysis were applied to the protestant's well at a flow rate of 1,225 gpm the drawdown would exceed 295.49 feet due to the greater flow rate. When the additional impact of the proposed well is taken into consideration, an additional drawdown of 65 to 97 feet becomes significant.

When the water level in a well drops below the level of the pump intake water can no longer be diverted from the well. The pump intake should not be placed within the well screen, because distorted flow patterns will occur that may result in increased intake velocities. These increased velocities are known to cause higher incrustation rates, corrosion, sand pumping, and mixing of air and water from dewatering of the screen, which can also lead to incrustation. Although the total depth of the GRGID No. 8 well is 500 feet, the water level in the well must be some distance above the bottom to accommodate the well design. Should the water level decline to a point below the maximum depth of the pump intake, the well will cease to produce at the necessary diversion rate.

In summary, the analysis by the applicant's agent shows that the applicant's proposed well may cause the water level to be lowered at the point of diversion of the prior appropriator (Gardnerville Ranchos GID), such that their rights may not be satisfied.

⁴ See, Drawdown Analysis dated November 3, 2003, in File No. 69135, official records in the Office of the State Engineer.

⁵ File Nos. 69653 and 48752, official records in the Office of the State Engineer.

The State Engineer finds the projected drawdown impact of 65 to 97 feet at the protestant's GRGID No. 8 well is not reasonable and will conflict with their existing rights.

III.

Permit 18976, Certificate 5975 was filed in the name of Stoddard and Jewel Jacobsen and they are listed as the current owner of record in the Office of the State Engineer. Change Application 69135 was filed in the name of Sierra Nevada SW Enterprises. The applicant's agent, in his letter of November 3, 2003, states that the "...subject application seeks permission to drill a new well on property owned by River Tree Ranch, LLC (a closely related entity to the Applicant)." A search of *Corporate Information* on the Nevada Secretary of State web site show the resident agent as Scarpello, Huss & Oshinski, Ltd. and the manager or member as Corporate Management Services, for both Sierra Nevada SW Enterprises and River Tree Ranch, LLC. There was no indication that Stoddard and Jewel Jacobsen are associated with either entity.

The State Engineer shall not consider a change application for approval unless the owner of the change application can demonstrate title to the permit that forms the basis for the change application. A review of the records in the Office of the State Engineer show that the owners of change Application 69135 have not submitted a Report of Conveyance and supporting documentation demonstrating title to Permit 18976, Certificate 5975, which forms the basis for change Application 69135. The State Engineer finds that Permit 18976, Certificate 5975 is in different ownership than change Application 69135.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁶

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁷

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

⁶ NRS chapters 533 and 534.

⁷ NRS § 533.370 (4).

- C. or conflicts with protectible interests in existing domestic wells as set forth in NRS 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

III.

The analysis by the applicant's agent shows a potential drawdown in the protestant's existing well of 65 to 97 feet if Application 69135 was approved. The State Engineer concludes this level of impact is unreasonable and will conflict with the protestant's existing rights.

IV.

The current owner of record of Application 69135 is Sierra Nevada SW Enterprises. The current owner of record of Permit 18976, Certificate 5975 is Stoddard and Jewel Jacobsen. The State Engineer concludes that to approve an application to change a water right in which the applicant has not proven ownership by the filing of a Report of Conveyance and supporting documentation would threaten to prove detrimental to the public interest.

RULING

The protest to Application 69135 is hereby upheld and the application is denied on the grounds that its issuance would conflict with existing rights and threaten to prove detrimental to the public interest.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 22nd day of

October, 2004.