

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

IN THE MATTER OF APPLICATION )  
71612-T FILED TO TEMPORARILY )  
CHANGE THE POINT OF DIVERSION )  
AND PLACE OF USE OF THE PUBLIC )  
WATERS OF A SUPPLEMENTAL )  
UNDERGROUND SOURCE PREVIOUSLY )  
APPROPRIATED UNDER PERMIT 18934, )  
CERTIFICATE 6075, WITHIN THE )  
MASON VALLEY HYDROGRAPHIC )  
BASIN (108), LYON COUNTY, NEVADA. )

**RULING**

**#5501**

**GENERAL**

**I.**

Application 71612-T was filed on August 26, 2004, by the Nevada Department of Wildlife / Mason Valley Wildlife Mgmt. Area to temporarily change the point of diversion and place of use of 5.4 cubic feet per second, not to exceed 450 acre-feet annually of supplemental underground water previously appropriated under Permit 18934, Certificate 6075, for wildlife and recreation purposes. The proposed place of use is described as being located within the south-central part of the Mason Valley Wildlife Management Area and is further described in attached Exhibit A. The existing place of use is described as being located within the southwest corner of the Mason Valley Wildlife Management Area and is further described in attached Exhibit B. The proposed point of diversion is the Joggles Well described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 17, T.14N., R.26E., M.D.B.&M. The existing point of diversion is the South Bolster Well described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 25, T.14N., R.25E., M.D.B.&M.<sup>1</sup>

**II.**

Certificate 6075 was issued on June 29, 1966, under Permit 18934 for irrigation purposes. The underground water was permitted to supplement surface water available from the Walker River through water rights under the Walker River Decree (C-125) and

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<sup>1</sup> File No. 71612-T, official records in the Office of the State Engineer.

through storage rights under the Walker River Irrigation District. The period of use is seasonal from March 15<sup>th</sup> to October 10<sup>th</sup> of each year and reflects the typical irrigation season for the area.<sup>2</sup>

### **FINDINGS OF FACT**

#### **I.**

On November 19, 2003, the applicant filed change application 70649 for the purpose of allowing 50.957 cubic feet per second, not to exceed 13,588 acre-feet, of Walker River surface water to be changed from irrigation on the Mason Valley Wildlife Refuge to Walker Lake. The permit was approved on March 5, 2004, and the permit terms further specified, "Whenever any of the water rights changed by this permit are in priority, the flow allowed by the Walker River Decree to be diverted at the existing point of diversion to serve those water rights shall be administered so that 55% of the flow rate duty remains in the stream and 45% of the flow rate duty is diverted at the existing point of diversion into the applicable ditches." The permit has an expiration date of October 31, 2004, with the water returning to the original permits upon expiration.<sup>3</sup>

The letter accompanying Application 71612-T, explains that the change application is needed to supplement the surface water that was reduced as a result of the approval of Permit 70649. Specifically, the letter states, "The Department of Wildlife received a permit (#70649) from the State Engineer to convey 55% of its decree flows to Walker Lake this summer and is, therefore, in need of pumping groundwater to aid in maintenance of wetland habitat and for providing recreational opportunity for waterfowl hunters this fall."<sup>1</sup>

Supplemental underground rights are primarily issued for the purpose of insuring that irrigated land can receive its full duty of water when surface water rights cannot be satisfied due to some circumstance that is out of the control of the farmer, such as drought. In a normal water year, it is expected that the supplemental underground right would not be utilized and only a portion of the right would be utilized in a drought year. The supplemental underground right is tied to the surface water on the existing place of use. Under most circumstances, the supplemental underground water cannot be changed

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<sup>2</sup> File No. 18934, official records in the Office of the State Engineer.

<sup>3</sup> File No. 70649, official records in the Office of the State Engineer.

without a corresponding change in the surface water, i.e. both the surface water and underground water must move together or, in some circumstances, the surface water may be moved if the underlying supplemental underground water is withdrawn.

In this case, the applicant has proposed severing the supplemental underground water from the surface water on the existing place of use to utilize the underground water at a nearby place of use on the Mason Valley Wildlife Refuge. The reason given for needing additional water is that the amount of surface water on the new place of use was reduced as a result of the applicant diverting a substantial portion of its surface water to Walker Lake. If Application 71612-T were approved, this would create an improper use of a supplemental underground right that would result in an additional withdrawal of underground water from the Mason Valley aquifer that would not otherwise occur, thus creating a de facto water appropriation of 450 acre-feet in a groundwater basin where new appropriations of water are limited to preferred uses less than 1,800 gallons per day (~2.02 acre-feet) by State Engineer's Order No. 1125.<sup>4</sup> The supplemental underground water has a period of use that ends with the typical irrigation season on October 15<sup>th</sup> of each year. The requested temporary change would result in water being withdrawn from the aquifer after that date.

The State Engineer finds the proposed changes under Application 71612-T are inconsistent with the supplemental character of Permit 18934, Certificate 6075, and would result in the additional withdrawal of 450 acre-feet of ground water that otherwise would not be withdrawn from the underground aquifer.

### CONCLUSIONS

#### I.

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

#### II.

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

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<sup>4</sup> State Engineer's Order No. 1125, February 4, 1997, official records in the Office of the State Engineer.

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

<sup>6</sup> NRS § 533.370(4).

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

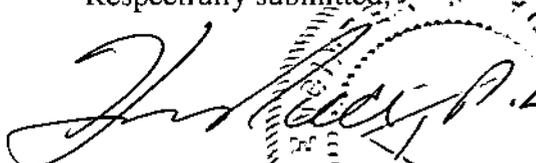
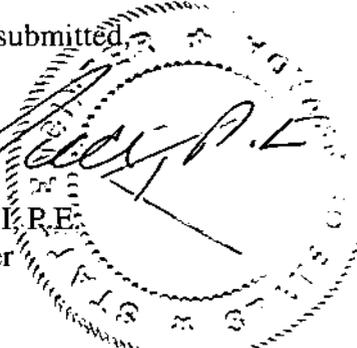
**III.**

If approved, Application 71612-T would pump an additional 450 acre-feet of water from the Mason Valley underground basin, would temporarily sever a supplemental underground right from its overlying surface water and would improperly change the character of the supplemental underground right. The State Engineer concludes approval of Application 71612-T would conflict with existing rights and would threaten to prove detrimental to the public interest.

**RULING**

Application 71612-T is hereby denied on the grounds that its approval would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,

HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 9th day of

August, 2005

EXHIBIT "A" (Land appurtenant to) →

Permits: 33521, 50702, 50703, 50704, 50706 & 50707

PROPOSED PLACE OF USE - Mason Valley Wildlife Management Area

T. 14N., R. 25 E.-

Sec.25 - Portions of NW1/4NE1/4, SW1/4NE1/4, E1/2NE1/4

Sec.24 - E1/2 E1/2, portions of NE1/4SW1/4, SW1/4SE1/4, *w/2 NE1/4, NW*

Sec.13 - Portions of SW1/4SE1/4, SE1/4SE1/4, NE1/4SE1/4, SE1/4NE1/4, NE1/4NE1/4 *SE*

Sec.12 - Portions of E1/2 E1/2

Sec.1 - Portions of NE1/4SE1/4, SE1/4NE1/4, NE1/4NE1/4

T.15N, R.25E,-

Sec.36 - Portions of SE1/4SE1/4

T.15N., R.26E.-

Sec.30 - Portions of SE1/4SW1/4

Sec.31 - SE1/4, S1/2NE1/4, portions of NE1/4NE1/4, NW1/4NE1/4, NE1/4NW1/4, SE1/4NW1/4, SW1/4NW1/4, NW1/4SW1/4, SW1/4SW1/4, E1/2SW1/4

Sec.32 - S1/2, Portions of S1/2N1/2

Sec.33 - S1/2, Portions of S1/2N1/2

Sec.34 - SW1/4 SW1/4

T.14N., R.26E -

Sec.3 - W1/2 W1/2

Sec 4,5,8,9,16,17- All

Sec.6 - E1/2, E1/2W1/2, NW1/4NW1/4, portions of SW1/4NW1/4, NW1/4SW1/4, SW1/4SW1/4

Sec.7 - E1/2, E1/2W1/2, SW1/4NW1/4, SW1/4SW1/4, portions of NW1/4NW1/4, NW1/4SW1/4

Sec.10 - W1/2 W1/2

Sec.15 - W1/2 W1/2

Sec.18 - E1/2, E1/2W1/2, NW1/4SW1/4, SW1/4SW1/4, portions of NW1/4NW1/4, SW1/4NW1/4

Sec.19 - NE1/4

Sec.20 - N1/2

Sec.21 - W1/2 NW1/4

Exhibit "B"

Land appurtenant to well permit #18934

Description of land to which the water is appurtenant:									
20.19	acres in the	NE $\frac{1}{4}$	NE $\frac{1}{4}$	of Section 13,	T. 14 N.,	R. 25 E.,	M.D.B. & M.		
2.54	"	"	NW $\frac{1}{4}$	NE $\frac{1}{4}$	"	"	"	"	"
37.43	"	"	SE $\frac{1}{4}$	NE $\frac{1}{4}$	"	"	"	"	"
9.18	"	"	SW $\frac{1}{4}$	NE $\frac{1}{4}$	"	"	"	"	"
14.91	"	"	NE $\frac{1}{4}$	SE $\frac{1}{4}$	"	"	"	"	"
16.98	"	"	NW $\frac{1}{4}$	SE $\frac{1}{4}$	"	"	"	"	"
18.37	"	"	SW $\frac{1}{4}$	SE $\frac{1}{4}$	"	"	"	"	"
.69	"	"	SE $\frac{1}{4}$	SE $\frac{1}{4}$	"	"	"	"	"
17.91	"	"	NW $\frac{1}{4}$	NE $\frac{1}{4}$	of Section 24,	"	"	"	"
2.30	"	"	NE $\frac{1}{4}$	NW $\frac{1}{4}$	"	"	"	"	"
.69	"	"	SW $\frac{1}{4}$	NE $\frac{1}{4}$	"	"	"	"	"
19.28	"	"	SE $\frac{1}{4}$	NW $\frac{1}{4}$	"	"	"	"	"
28.70	"	"	NE $\frac{1}{4}$	SW $\frac{1}{4}$	"	"	"	"	"
4.82	"	"	NW $\frac{1}{4}$	SW $\frac{1}{4}$	"	"	"	"	"
33.97	"	"	SE $\frac{1}{4}$	SW $\frac{1}{4}$	"	"	"	"	"
12.17	"	"	SW $\frac{1}{4}$	SW $\frac{1}{4}$	"	"	"	"	"
16.76	"	"	SW $\frac{1}{4}$	SE $\frac{1}{4}$	"	"	"	"	"
1.84	"	"	NW $\frac{1}{4}$	NW $\frac{1}{4}$	of Section 25,	"	"	"	"
12.39	"	"	NE $\frac{1}{4}$	NW $\frac{1}{4}$	"	"	"	"	"
21.35	"	"	NW $\frac{1}{4}$	NE $\frac{1}{4}$	"	"	"	"	"
3.21	"	"	SW $\frac{1}{4}$	NW $\frac{1}{4}$	of Section 18,	T. 14 N.,	R. 26 E.,	M.D.B. & M.	