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

IN THE MATTER OF APPLICATION 75111)
FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF)
UNDERGROUND WATER PREVIOUSLY) **RULING**
APPROPRIATED UNDER PERMIT 73684,) **#5787**
WITHIN THE LAS VEGAS VALLEY)
HYDROGRAPHIC BASIN (212), CLARK)
COUNTY, NEVADA.)

GENERAL

I.

Application 75111 was filed on November 20, 2006, by Phillip Cooper to change the point of diversion and place of use of 5.0 acre-feet annually (afa) of underground water previously appropriated under Permit 73684. The proposed manner of use is for quasi-municipal purposes and the existing manner of use was also for quasi-municipal purposes. The proposed place of use comprises approximately 3,250 acres within the Garnet Valley Hydrographic Basin (216) and is totally within the approximately 21,000 acres of land conveyed from the United States Government to Clark County pursuant to Public Law 101-67, commonly referred to as the Apex Project. The proposed place of use is further described in Exhibit "A" attached to the application. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 31, T.18S., R.63E., M.D.B.&M., within the Las Vegas Valley Hydrographic Basin (212).[1]

II.

Permit 73684 was filed December 30, 2005, by Phillip Cooper to change the point of diversion, place of use and manner of use of a portion of underground water previously appropriated under Permit 10940, Certificate 4402. Permit 73684 was approved on February 26, 2007, at a duty of 0.0372 cubic-feet per second (cfs) not to exceed 18.562 afa. The place of use is described as being located within the W½ SE¼ NE¼ SE¼ of Section 22, T.19S., R.60E., M.D.B.&M. The point of diversion is described as being located within the W½ SE¼ NE¼ SE¼ of said Section 22.[2]

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[1] File No. 75111, official records in the Office of the State Engineer.
[2] File No. 73684, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Nevada Revised Statute § 534.120 provides that within an area that has been designated by the State Engineer where, in his judgment, the ground-water basin is being depleted, the State Engineer in his administrative capacity is empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved. The application of this provision of the NRS to the Las Vegas Valley Hydrographic Basin is evidenced in a series of orders issued by the State Engineer beginning with State Engineer's Order No. 175, which was issued on January 10, 1941.[3] This initial order described and designated a portion of the Las Vegas Valley Artesian Basin as a ground-water basin in need of additional administration. The boundaries of the Las Vegas Valley Artesian Basin were expanded by the issuance of State Engineer's Order Nos. 182, 189, 249, 275 and 833 on February 29, 1944, November 22, 1946, April 18, 1961, May 25, 1964, and December 27, 1983, respectively.[4,5,6,7,8,9] By designating the Las Vegas Valley Hydrographic Basin, the State Engineer created a mechanism that allowed further restrictions relating to the management of underground water from the basin to be emplaced.

The State Engineer finds the proposed point of diversion of the subject change application is located within the designated boundaries of the Las Vegas Valley Hydrographic Basin.

II.

An interbasin transfer of water is where the point of diversion is in one hydrographic basin and the place of use is in a different hydrographic basin. In this case, the Applicant has proposed to change a portion of water to a well located near the border of the Garnet Valley and Las Vegas Valley Hydrographic Basins. Both the existing well and the proposed well are within the Las Vegas Valley Hydrographic Basin (Basin 212)

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[3] State Engineer's Order No. 175, official records in the Office of the State Engineer.
[4] Note; at the time that these orders were issued, the groundwater basin was known as the Las Vegas Artesian Basin.
[5] State Engineer's Order No. 182, official records in the Office of the State Engineer.
[6] State Engineer's Order No. 189, official records in the Office of the State Engineer.
[7] State Engineer's Order No. 249, official records in the Office of the State Engineer.
[8] State Engineer's Order No. 275, official records in the Office of the State Engineer.
[9] State Engineer's Order No. 833, official records in the Office of the State Engineer.

but, under Application 75111, water will be conveyed to the proposed place of use within the Garnet Valley Hydrographic Basin (Basin 216), thus constituting an interbasin transfer of water. The determination of whether Application 75111 proposes an interbasin transfer of water is significant because additional statutory criteria apply to interbasin transfers.

Nevada Revised Statute § 533.370(6) provides that:

> In determining whether an application for an interbasin transfer of groundwater must be rejected pursuant to this section, the State Engineer shall consider:
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> > (a) Whether the applicant has justified the need to import the water from another basin;
> > (b) If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;
> > (c) Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;
> > (d) Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and
> > (e) Any other factor the State Engineer determines to be relevant.

The State Engineer finds that Application 75111 represents an interbasin transfer of water from the Las Vegas Valley Hydrographic Basin to the Garnet Valley Hydrographic Basin. The State Engineer further finds that additional statutory requirements under NRS § 533.370(6) must be satisfied.

III.

The Applicant provided additional information to the Office of the State Engineer in the form of a letter dated June 5, 2007. It is indicated that the Applicant has explored a multitude of possibilities for obtaining and transferring water rights to the project property but none of the possibilities have panned out at this time. The project property is described as about 3,250 acres of land with only 10.02 afa of appurtenant water rights under Permit 55674, Certificate 16705. The Applicant has indicated that 10.02 afa of

water ". . . obviously is an insufficient volume to cover and serve the entire 3,250 acres."[10]

A ground-water pumpage inventory has been conducted in the Garnet Valley Hydrographic Basin on an annual basis as part of a concerted effort to monitor water usage in areas of active management. In 2006, the reported ground-water pumpage within the Garnet Valley Hydrographic Basin was 1,558 afa.[11] Permits and certificates have been issued for approximately 4,000 afa of water. The disparity between the amount of water being pumped and the amount of water that could be pumped under existing water rights raises concerns regarding whether the Applicant has fully exhausted all other avenues for obtaining in-basin water resources.

A ground-water pumpage inventory has been conducted in the Las Vegas Valley Hydrographic Basin on an annual basis since at least 1956, as part of an effort to monitor water usage in this area of active management. Currently, the total ground-water rights permitted within Basin 212 equals 86,613 afa. Of this amount 68,347 afa of ground water was pumped from the Las Vegas Valley in 2006.[12] The United States Geological Survey estimates the perennial yield of Basin 212 at 25,000 afa.[13] The State Engineer may consider any other factor determined to be relevant and one such factor is consideration of the basin from which the water is to be exported.[14] Assuming the Applicant has justified the need to import water, the next logical question becomes, which basin should the water be exported from? The Applicant has proposed to export water from a basin that is both over-pumped and over-appropriated for use within a basin that is significantly under-pumped. The State Engineer finds that to approve the export of water from Basin 212, where the current ground-water pumpage far exceeds the basin's estimated perennial yield, is not environmentally sound, is not an appropriate long-term use, would unduly limit future growth and development and is contrary to the proper management of the ground-water basin's resource.

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[10] *See*, Correspondence, June 5, 2007, File No. 75111, official records in the Office of the State Engineer.
[11] *Groundwater Pumpage Inventory Garnet Valley No. 216*, Nevada Division of Water Resources, 2006, official records in the Office of the State Engineer.
[12] *Las Vegas Valley Water Usage Report*, Nevada Division of Water Resources, 2006, official records in the Office of the State Engineer.
[13] State Engineer's office, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p. 25, Oct. 1971.
[14] NRS § 533.370(6)(e).

IV.

The Las Vegas area has under gone tremendous population growth and it is predicted that the growth will continue.[15] In order to plan for sufficient water resources, the Southern Nevada Water Authority was formed and has initiated numerous plans for obtaining the water resources necessary to meet current and future demands. In this regard, there currently are at least two major projects to import ground water to the Las Vegas area. First, the Three Lakes importation project proposes to import water from northwestern Clark County. Second is the Pipeline project, which proposes to pump ground water along the eastern side of Nevada in White Pine, Lincoln and northern Clark County.

The State Engineer finds that to export water from Basin 212, at a time when there are large water importation projects under consideration to bring additional water to the area, is contrary to the public interest and would set an inappropriate precedence.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[16]

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:[17]

A. there is no unappropriated water at the proposed source;
B. the proposed use or change 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.

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[15] *Annual Population Estimates* and *Annual Population Projections*, Nevada Department of Taxation, State Demographer's Web-site, Data and Publications, July 30, 2007.
[16] NRS chapters 533 and 534.
[17] NRS § 533.370(5).

III.

The State Engineer concludes the proposed interbasin transfer does not meet the statutory criteria, per Nevada Revised Statute § 533.370(6)(c)(d)(e); therefore, Application 75111 is subject to denial.

IV.

The State Engineer concludes that approval of change Application 75111 would threaten to prove detrimental to the public interest.

RULING

Application 75111 is hereby denied on the grounds that it does not meet the interbasin transfer criteria specified in Nevada Revised Statute § 533.370(6) and its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,

TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 8th day of October, 2007.