

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

IN THE MATTER OF APPLICATION 71203 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE MERCURY )  
VALLEY HYDROGRAPHIC BASIN (225), )  
NYE COUNTY, NEVADA. )

**RULING**

**#5858**

**GENERAL**

**I.**

Application 71203 was filed on May 11, 2004, by Thomas S. Buqo to appropriate 11.5 cubic feet per second of underground water from the Mercury Valley Hydrographic Basin for quasi-municipal purposes within the NW¼ SE¼ of Section 16, T.15S., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 16, T.15S., R.53E., M.D.B.&M.<sup>1</sup> The remarks section of the application indicates that initial activities will be limited to monitoring and testing of the appropriate scope and duration, and if water is of suitable quantity and quality, change in place of use to the towns of Amargosa Valley or Pahrump (Basins 230 or 162, i.e., an interbasin transfer) will be sought.

**II.**

The application was timely protested by W.H. DeWitt on the grounds that the proposed use of the water will deplete water that currently flows into the Amargosa Valley where it is fully appropriated.

The application was timely protested by Vidler Water Company, Inc. on the grounds the places of use are not adequately identified and are likely on properties controlled by the United States Governmental agencies. In fact, the proposed point of diversion is located on land managed by the United States Department of Energy as part of the Nevada Test Site; therefore, the Applicant does not own or control the proposed point of diversion or place of use. Additionally, there is no evidence that Mr. Buqo has the financial resources to place the water to beneficial use and Vidler Water Company, Inc. has senior pending applications in the hydrographic basin.

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<sup>1</sup> File No. 71203, official records in the Office of the State Engineer.

The application was timely protested by Nevada Water Committee on the grounds that the use of the water as proposed would interfere with existing water rights, there is insufficient water to support the application, and the Applicant has not obtained access to the proposed point of diversion, along with various other protest grounds not relevant to the decision made in this ruling.

The application was timely protested by the United States Fish and Wildlife Service on grounds related to its concerns in Ash Meadows and the Devil's Hole Unit of Death Valley National Park.

The application was timely protested by the United States Department of Energy, National Nuclear Security Administration on various grounds including that the proposed point of diversion is on property controlled by the U.S. Department of Energy; therefore, the Applicant does not own or control or otherwise have access to the point of diversion and will not be able to prove upon the works of diversion.

The application was timely protested by the United States Department of Interior, National Park Service on grounds related to its concerns in Ash Meadows and the Devil's Hole Unit of Death Valley National Park.<sup>1</sup>

## **FINDINGS OF FACT**

### **I.**

Nevada Revised Statute § 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 71203 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 water right application is filed to request an appropriation of water to be appropriated from a specific point of diversion to be used for a specific purpose within a well defined place of use. Prior to the approval of a water right application, it must be determined that there is a reasonable expectation that the water requested for appropriation will be placed to its proposed beneficial use. An examination of the land ownership records in the Office of the State Engineer shows that the subject application requests an appropriation of underground water from a point of

diversion located upon land that has been withdrawn from public use as the Nevada Test and Training Range. The State Engineer finds the point of diversion is on property controlled by the United States Government, which is land the Applicant does not own, control or have access to and therefore will not be able to prove upon the works of diversion. The State Engineer finds that since the Applicant does not have control of the point of diversion and is highly unlikely to ever obtain permission to access the proposed point of diversion that the ability to divert and use water as proposed under the subject application does not exist; therefore, there is no reasonable expectation that beneficial use will occur under any permit granted under the subject application.

### **CONCLUSIONS**

#### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>2</sup>

#### **II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>3</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

#### **III.**

The State Engineer concludes that to approve a water right application for which the Applicant cannot obtain access to the proposed point of diversion would threaten to prove detrimental to the public interest.

#### **IV.**

Application 71203 requests an appropriation of underground water from a point of diversion that is located upon land that has been withdrawn from public use. Protests submitted by the lawfully recognized steward of the land in question pointedly indicate they will not authorize access or the development of any water infrastructure. The absence of the land steward's consent to

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<sup>2</sup> NRS chapters 533 and 534.

<sup>3</sup> NRS § 533.370(5).

the Applicant's access and development of the water sought under these applications eliminates the expectation that the water will be put to beneficial use. The State Engineer concludes that under these circumstances, the approval of the subject applications would threaten to prove detrimental to the public interest.

**RULING**

Application 71203 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest. No ruling is made on the remaining protest issues.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/SJT/jm

Dated this 10th day of  
June 2008.