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

IN THE MATTER OF APPLICATION 73242 FILED TO APPROPRIATE THE PUBLIC WATERS OF AN UNDERGROUND SOURCE WITHIN THE IMLAY AREA HYDROGRAPHIC BASIN (72), PERSHING COUNTY, NEVADA.	**RULING** **#5871**

GENERAL

I.

Application 73242 was filed on September 12, 2005, by Lillian Sue A. Nouque to appropriate 0.11 cubic feet per second (cfs) of underground water for irrigation and domestic purposes. The proposed place of use is described as being located within the S½ SE¼ of Section 4, T.32N., R.34E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of said Section 4.[1]

FINDINGS OF FACT

I.

State Engineer's Order No. 702, issued January 31, 1978, described and designated the Imlay Area Hydrographic Basin as a ground-water basin in need of additional administration under the provisions of NRS § 534.030.[2]

All water right applications, which are filed in the Office of the State Engineer, are subjected to a simple analysis to determine the location of the proposed points of diversion. This determination is a critical part of the

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[1] File No. 73242, official records in the Office of the State Engineer.

[2] State Engineer's Order No. 702, January 31, 1978, official record in the Office of the State Engineer.

initial application review process and establishes which hydrographic basin the proposed points of diversion are located within. The description of the proposed point of diversion, found within Application 73242 and its supporting map, was used to plot the location of the proposed well site. This location was found to be within the Imlay Area Hydrographic Basin.

The State Engineer finds that Application 73242 has a proposed point of diversion that is located within the hydrologic boundaries of the designated Imlay Area Hydrographic Basin.

II.

Applications that request a permanent appropriation of underground water for irrigation purposes within the Imlay Area Hydrographic Basin have been denied by the State Engineer since 1976. These denials were based on the grounds that the appropriation of underground water for irrigation purposes would conflict with and tend to impair the value of existing rights and be detrimental to the public interest and welfare.[3] The State Engineer finds that Application 73242 has the effect of appropriating water for a similar use and within the same basin as applications that have been denied in the past.

III.

The Nevada Revised Statutes (NRS) chapters 533 and 534 and the policies developed by the Office of the State

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[3] See, State Engineer Rulings for Applications 28473, 28474, 28475, 28480, 28485, 28486, 28487, 28488, 28489, 28490, 28491, 28493, 28494, 29083 through 29097, 30619, 30620, 30621, 30773, 30885, 31487, 31488, 31489, 31490, 31491, 31492, 31631, 31632, 31633, 31634, 61635, 61636, 32488 through 32501, 32797, 32798, 35058, 35059, 35060, 36050, 35945, 35946, 35947, 37107, 45510, 46928 and 60581.

Engineer control the appropriation of water within the State of Nevada. Under the provisions found under NRS § 533.370(5), before an application that requests a new appropriation of underground water can be considered for approval it must be determined, among other things, that there is unappropriated water available at the targeted source. The answer to the question of what amount of underground water is available for additional appropriation from the Imlay Area Hydrographic Basin can be found in an analysis of the basin's recharge-discharge relationship. Central to this equation is the concept of the perennial yield of the Imlay Area Hydrographic Basin.

Perennial yield of a ground-water reservoir may be defined as the maximum amount of ground water that can be salvaged each year over the long term without depleting the ground-water reservoir. Perennial yield is ultimately limited to the maximum amount of natural discharge that can be salvaged for beneficial use. If the perennial yield is continually exceeded ground-water levels will decline.

Withdrawals of ground water in excess of the perennial yield contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increase in cost due to increased pumping lifts, land subsidence and possible reversal of ground-water gradients, which could result in significant changes in the recharge-discharge relationship.[4]

The perennial yield of the Imlay Area Hydrographic Basin can be derived from the estimates of the basin's annual ground-water recharge and discharge. It is

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[4] Office of the State Engineer, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p. 13, Oct. 1971.

estimated that the perennial yield of the Imlay Area Hydrographic Basin is approximately 3,000 acre-feet annually.[5]

The Office of the State Engineer has for many years relied upon the United States Geological Survey's estimates of perennial yield. These estimates are critical in determining the degree of regulation, which must be placed upon a basin's limited underground water resources. The committed ground-water resource in the form of permits and certificates issued by the Office of the State Engineer and within the Imlay Area Hydrographic Basin currently exceeds 11,634 acre-feet annually.

Application 73242 requests a new appropriation of ground water from the Imlay Area Hydrographic Basin. The amount of water requested is not shown on the application; only a diversion rate of 0.11 cfs is indicated. Although there is only a diversion rate specified, additional information contained in the application file indicates that the Applicant is requesting sufficient water for the irrigation of about 1 acre of land. The standard duty assigned for irrigation permits in this area is 4.0 acre-feet per acre. Therefore, the duty of water can also be calculated by multiplying the number of acres by the standard duty per acre. The result is about 4.0 acre-feet annually.

The State Engineer finds that the estimated perennial yield of the Imlay Area Hydrographic Basin is 3,000 acre-

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[5] Thomas E. Eakin, *Ground-Water Resources - Reconnaissance Series Report 5, Ground-water Appraisal of the Imlay Area , Humboldt River Basin, Pershing County, Nevada.* Department of Conservation and Natural Resources in Cooperation with the U.S. Geological Survey, p. 37, (1962).

feet annually and the committed resources exceed 12,575 acre-feet annually. The State Engineer finds that Application 73242 requests a permanent appropriation of underground water for the irrigation of about 1.0 acre of land or about 4.0 acre-feet annually within the Imlay Area Hydrographic Basin.

IV.

On July 17, 2007, the Applicant and her agent were notified by certified letter of the need for additional information regarding the proposed irrigation project under Application 73242. The Applicant was specifically requested to answer six distinct questions as follows:[6]

1. It is indicated that the place of use is lots 9-16. Provide confirmation that you own or control the eight lots in question.
2. Are the any existing domestic units or other buildings on any of the eight lots? Explain.
3. What are your development plans for the place of use?
4. For any existing domestic units, indicate the type of water service. For example, public utility, domestic well, spring source, etc.
5. Information indicates that the place of use is within the Town of Imlay. Indicate whether you are within the service area of the local water purveyor.
6. If within a municipal or quasi-municipal water service area, justify the need for a well.

The Applicant responded by letter dated July 18, 2007, and provided information regarding ownership of the parcels in response to Question #1. The Applicant indicated she is the owner of lots 11, 12, 13, 14, 15 & 16 and her father and mother are owners of lots 9 & 10. However, the

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[6] See, Certified Letter to Applicant, July 17, 2007, File No. 73242, official records in the Office of the State Engineer.

Applicant did not provide any information in response to the remaining questions.

The State Engineer finds that the Applicant has not provided sufficient information to properly guard the public interest and without this additional information Application 73242 cannot be considered for approval.

V.

As part of the application review process, the location of the point of diversion and place of use is compared to existing water rights. This analysis assists in determining whether or not the proposed application will conflict with existing rights. Records show the proposed point of diversion and place of use of Application 73242 are located within the described place of use of Permits 64063 and 64064.[7] Permits 64063 and 64064 were issued to Pershing County to provide a municipal water supply for the Town of Imlay.[8]

Nevada Revised Statutes § 534.120(3) provides that in a designated basin, the State Engineer may:

a) Issue temporary permits to appropriate ground water which can be limited as to time and which may, except as limited by subsection 4, be revoked if and when water can be furnished by an entity such as a water district or a municipality presently engaged in furnishing water to the inhabitants thereof.
b) Deny applications to appropriate ground water for any use in areas served by such an entity.
c) Limit the depth of domestic wells.
d) Prohibit the drilling of wells for domestic use, as defined in NRS 534.013 and 534.0175, in areas

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[7] Township Plats, T.32N., R.34E., M.D.B.&M., official records in the Office of the State Engineer.
[8] File Nos. 64063 and 64064, official records in the Office of the State Engineer.

> where water can be furnished by an entity such as a water district or a municipality presently engaged in furnishing water to the inhabitants thereof.

As noted in the previous section of this ruling, the Applicant was asked several questions relating to this issue, Questions #4, #5 and #6, and for whatever reason has chosen not to submit a response. Information on file in the Office of the State Engineer indicates that water service is currently available within the proposed place of use by Pershing County's municipal system for the Town of Imlay.[9]

The State Engineer finds drilling a new well within an area where water can be furnished by a municipality may be prohibited. The State Engineer finds it is not a good policy to encourage individual wells within an area served by a public utility system without good cause.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[9]

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.[10]

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[9] NRS chapters 533 and 534.
[10] NRS § 533.375.

III.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:[11]

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.

IV.

The State Engineer concludes that previous applications to appropriate water for the same manner of use as Application 73242 were denied in the Imlay Area Hydrographic Basin; therefore, Application 73242 may be considered for denial.

V.

The State Engineer concludes that approval of the subject application would result in the permanent withdrawal of ground water in excess of the perennial yield of the Imlay Area Hydrographic Basin, and therefore, would adversely affect existing rights and would threaten to prove detrimental to the public interest.

VI.

The State Engineer concludes that to grant applications that allow the drilling of additional ground-water wells in areas where water can be furnished by an entity such as a water district or a municipality presently engaged in furnishing water to the inhabitants would be

[11] NRS § 533.370(5).

contrary to NRS § 534.120, and would threaten to prove detrimental to the public interest.

RULING

Application 73242 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,

TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 30th day of

June, 2008.