

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

IN THE MATTER OF PROTESTED)
APPLICATION 77341 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE JEAN LAKE VALLEY)
HYDROGRAPHIC BASIN (165), CLARK)
COUNTY, NEVADA.)

RULING
#5951

GENERAL

I.

Application 77341 was filed on August 25, 2008, by TPC Aggregates LLC, to appropriate 0.557 cubic feet per second, not to exceed 60 acre-feet annually (afa) of water from an underground source. The proposed manner of use is described as being for mining (sand and gravel operation). The proposed place of use is described as being located within the W $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34 and the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, all located within T.25S., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T.25S., R.60E., M.D.B.&M.¹

II.

Application 77341 was timely protested by the Las Vegas Valley Water District on the following grounds:¹

1. According to current estimates of perennial yield and known committed water rights, there is no unappropriated water available for appropriation by the applicant in Basin No. 165 (Jean Lake Valley). Additionally, Basin No. 165 is a designated basin (See Order No. 966).
2. The Las Vegas Valley Water District (LVVWD) holds senior water rights in adjacent hydrographic Basin No. 164 (Ivanpah Valley-North Part), which LVVWD uses to supply municipal water service to Jean, Nevada.
3. Granting this application would adversely affect the existing rights of LVVWD.
4. Given the water quality issues in and around the area of Jean, Clark County, Nevada, granting this application would lead to further degradation of water quality.

¹ File No. 77341, official records in the Office of the State Engineer.

5. Granting the application in light of these protest grounds would threaten to prove detrimental to the public interest.

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 77341 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.

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.²

The United States Geological Survey estimates that the perennial yield of the Jean Lake Valley Hydrographic Basin is approximately 50 acre-feet.³ The committed ground-water resources in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Jean Lake Valley Hydrographic Basin are 250.23 afa.⁴

III.

The majority of the ground-water rights issued within the Jean Lake Valley Hydrographic Basin, being 239.87 afa, were issued for mining and milling use in support of sand and gravel mining operations, and were issued with the following condition:⁵

² State Engineer's Office, Water for Nevada, State of Nevada Water Planning Report No. 3, p. 13, Oct. 1971.

³ P. A. Glancy Water-Resources Appraisal Of Mesquite-Ivanpah Valley Area, Nevada and California; Water Resources – Reconnaissance Series Report 46, Department of Conservation and Natural Resources in cooperation with the U.S. Geological Survey, p. 2, 1968.

⁴ Hydrographic Basin Abstract, official records in the Office of the State Engineer.

⁵ Permits 69497, 70008 and 75845, official records in the Office of the State Engineer.

This permit is issued under the preferred use provisions of NRS Chapter 534. The manner of use of water under this permit is by nature of its activity a temporary use and any application to change its manner of use will be denied. Additionally, any application to change the place of use and/or point of diversion will be subject to additional determination and evaluation with respect to the permanent effects on existing rights and the resource within the ground-water basin.

In addition, Permit 70008, approved for a duty of 50 afa, and Permit 75845, approved for a duty of 150 afa, were issued with specific expiration dates of August 26, 2010, and December 31, 2023, respectively.

IV.

The State Engineer finds that mining and milling use are by their very nature a temporary use of water and the State Engineer may issue permits to appropriate the public waters for mining and milling use under the preferred use provisions of NRS § 534.120(2).

V.

The State Engineer finds that the nearest Protestant's permitted well to the Applicant's proposed point of diversion under Application 77341 is approximately 4.5 miles distant and is located in an adjacent hydrographic basin.

CONCLUSIONS

I.

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

II.

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

- 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 allowing a temporary appropriation of underground water for mining and milling purposes in excess of the perennial yield is allowable under the

analysis that when the mining activity ceases, the right to appropriate water also ceases and the water is returned to the source and the system will return to equilibrium over time.

IV.

The State Engineer concludes that the approval of Application 77341 will not conflict with the Protestant's existing rights or threaten to prove detrimental to the public interest.

RULING

The protest is overruled and Application 77341 is hereby approved subject to:

1. Existing rights;
2. The payment of the statutory permit fees;
3. A monitoring program approved by the State Engineer prior to the diversion of any water appropriated under this permit; and
4. The issuance of the permit shall be re-evaluated at the completion of every 5-year period beginning January 1, 2014, for impacts to the hydrographic basin.

Respectfully submitted,


FOI2 TRACY TAYLOR, P.E.
State Engineer

TT/KE/jm

Dated this 12th day of

February , 2009 .