

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

IN THE MATTER OF APPLICATIONS)
77233 AND 77234 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE)
WITHIN THE AMARGOSA DESERT)
HYDROGRAPHIC BASIN (230), NYE)
COUNTY, NEVADA.)

RULING
5975

GENERAL

I.

Application 77233 was filed on July 17, 2008, by Victoria Capital Corp., to appropriate 0.0014 cubic feet per second (cfs), not to exceed 1.0 acre-foot annually (afa), of underground water for the stock watering of 220 goats. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T.12S., R.47E., M.D.B.&M. The proposed place of use is described as being located within portions of the E $\frac{1}{2}$ of said Section 19, more specifically, Nye County Parcel #18-371-07.¹

II.

Application 77234 was filed on July 17, 2008, by Victoria Capital Corp., to appropriate 0.0014 cfs, not to exceed 1.0 afa, of underground water for the stock watering of 220 goats. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T.12S., R.47E., M.D.B.&M. The proposed place of use is described as being within portions of the E $\frac{1}{2}$ of said Section 19, more specifically, Nye County Parcel # 18-371-07.²

III.

Applications 77233 and 77234 were timely protested by the Beatty Water and Sanitation District on the following grounds:^{1,2} "Per NRS 318.258 This land is within District Boundaries, Per NRS 278.462 Applicant has agreed to hookup to existing water utilities."

¹ File No. 77233, official records in the Office of the State Engineer.

² File No. 77234, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

The State Engineer shall consider a protested water right application and may, in his discretion, hold hearings and require the filing of such evidence as he may deem necessary to gain a full understanding of the issues before him. In the case of Applications 77233 and 77234 and their associated protests, the State Engineer finds that there is sufficient information available from the records of the Office of the State Engineer and that a public hearing in this matter is not required.³

II.

The Beatty Water and Sanitation District maintains a water service area, which includes the proposed points of diversion and the proposed places of use described under the subject applications.⁴ Under the provisions of NRS § 534.120(3)(b), the State Engineer may deny applications to appropriate underground water for any purpose in areas where water can be furnished by an entity such as a water district or municipal water company.

As part of its development plan for the proposed place of use, the Applicant submitted a parcel map for review before the Nye County Board of Commissioners. Pursuant to NRS § 278.464, the board reviewed the Victoria Capital Corp. parcel map at its July 3, 2008, meeting and elected to approve it subject to several conditions.

Condition No. 14, states the "Beatty Water and Sanitation District public utility approval jurat shall clearly state that the District intends to provide only water service (no sewer) to the proposed parcels, pursuant to the Notice of Intent to Serve dated August 16, 2007."

The Intent to Serve Notice affirms that the Beatty Water and Sanitation District has a 4-inch municipal water main in the area and can; therefore, provide the Applicant with water service.¹

The State Engineer finds that the place of use described by Victoria Capital Corp. can be provided water by the Beatty Water and Sanitation District and that there is no need to appropriate additional water under any permits that might be issued under Applications 77233 and 77234.

³ NRS § 533.365(3).

⁴ Water right permit map supporting Permits 66120 and 66121, official records in the Office of the State Engineer.

III.

It is the Applicant's intention to utilize two existing wells that have been dormant for extended periods of time. The history of these wells can be traced back through several generations of water rights to two permits that were issued within the Amargosa Desert in 1972. Ranchers Supply and Equipment Co. filed Applications 26391 and 26392 on November 4, 1971, to support a proposed residential development in Gold Center, which lies immediately south of Beatty, Nevada.

While this project never reached the construction phase, the wells under the supporting water right permits were drilled, with at least one being equipped with a pump and motor. The Proof of Completion submitted under Permit 26391 and the Proof of Commencement filed for Permit 26392, both describe 12-inch diameter wells that were drilled in the early 1970s to a depth of 150 feet.⁵ There is no evidence to suggest that either of these wells was pumped to any degree and both permits were cancelled prior to 1981.

A second attempt to utilize the subject wells was made in 1988, when Desert Enterprises, filed Applications 51879 and 51880. While the descriptions of their proposed points of diversion differ slightly from the earlier set of permits, it can be assumed that they are the same wells that were drilled in the 1970s.

After permits were issued in 1988, the permittee was able to file Proofs of Completion for Permits 51879 and 51880 on March 27, 1991 and February 25, 1992, respectively. Again, discrepancies existed between the earlier Proofs of Completion and those that followed in the 1990s, but the same assumption can be made that they all refer to the same set of wells.

Having filed the required Proofs of Completion, Desert Enterprises was expected to achieve a beneficial use of the water by January 30, 1994. The fact that the permittee was unable to meet this deadline is reflected in the numerous Applications for Extensions of Time that were filed from 1994 up to 2000. As stated by the permittee, additional time was required to complete its project due to the unfavorable economic conditions that existed at the time within the Beatty area. During this period of extended deadlines, ownership in both permits was transferred to Marc D. Chappell, and subsequently to the ATRJ General Partnership on December 22, 1999. ATRJ General Partnership maintained ownership of Permits 51879 and 51880 from this point forward.

The Application for Extension of Time that was received on September 24, 1999, provides evidence that ATRJ General Partnership has entered into a discussion with the Beatty Water and

⁵ File Nos. 26391 and 26392, official records in the Office of the State Engineer.

Sanitation District regarding the possible sale of Permits 51879 and 51880, as does the extension that was filed the following year for Permit 51870, in which the State Engineer's office is advised that change applications had been filed for Permits 51879 and 51880.

The filing of the change Applications 66120 and 66121 represented the first step in transferring these permits to new points of diversion controlled by the Beatty Water and Sanitation District for use within its service area. By letter dated August 30, 2001, the Beatty Water and Sanitation District and ATRJ General Partnership were advised by the Nevada Division of Water Resources that Applications 66120 and 66121 were ready to be approved and that it would be necessary to submit the statutory permit fees in a timely manner. Both parties were also put on notice that the issuance of the permits would require any wells drilled under Permits 51879 and 51880, respectively, to be plugged in accordance with the NAC § 534.420. The letter also contained a warning that the "Failure to plug these wells will result in further administrative action by the State Engineer."⁶ The State Engineer finds that the subsequent payment and approval of Permits 66120 and 66121 obligated ATRJ General Partnership and the Beatty Water and Sanitation District to plug the existing points of diversion abrogated by Permits 66120 and 66121.

IV.

Once a well has been plugged by a licensed well driller a well abandonment report must be submitted to the Nevada Division of Water Resources within 30 days of the plugging.⁷ There is no record of such a report ever being received in the Office of the State Engineer.⁸ A field investigation to the well site that was conducted in 2007, confirmed that the wells had not been plugged. The State Engineer finds that the ATRJ General Partnership and the Beatty Water and Sanitation District have failed to comply with the plugging requirement.

V.

Nevada Administrative Code § 534.424 states that, "If the well is located on private land, the owner of the land at the time the well is plugged is responsible for the cost of plugging the well." The Nye County Assessor's office lists Victoria Capital Corp., as the owner of Nye County APN #18-371-07. Under normal circumstances, the current land owner would be responsible for the plugging of the two wells. However, the ATRJ General Partnership, and the Beatty Water and

⁶ File Nos. 66120 and 66121, official records in the Office of the State Engineer.

⁷ NAC § 534.420(8) and NRS § 534.170.

⁸ Well Log Index Book, Well Log Database, T.12S., R.47E., M.D.B.&M., official records in the Office of the State Engineer.

Sanitation District never complied with the plugging requirement upon which the approval of Permits 66120 and 66121 rested.

The fact that the land containing the abandoned points of diversion was transferred to a subsequent party does not relieve either the ATRJ General Partnership or the Beatty Water and Sanitation District of the original plugging requirement set forth in the 2001 letter.

The State Engineer cautioned both parties in 2001 that their failure to plug the subject wells would result in further administrative action by the State Engineer. The corporate records of the Nevada Secretary of State's office failed to identify a listing for ATRJ General Partnership; therefore, there is a reasonable probability that it no longer exists. If this proves to be the case, the responsibility for plugging the wells is the Beatty Water and Sanitation District's alone.

Having determined that the wells have never been plugged, the State Engineer finds that the time for further action has arrived, and that ATRJ General Partnership and/or the Beatty Water and Sanitation District are ordered to plug the wells held under abrogated Permits 51879 and 51880 in the manner set forth under NAC chapter 534.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁰

- 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 proposed place of use described by the Applicant lies within the service area of the local municipal water purveyor. The State Engineer concludes the approval of additional

⁹ NRS chapter 534.

¹⁰ NRS § 533.370(5).

appropriations of ground water from the Amargosa Desert Hydrographic Basin in lieu of municipal service would threaten to prove detrimental to the public interest.

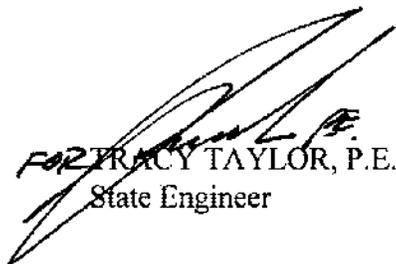
IV.

ATRJ General Partnership and the Beatty Water and Sanitation District have to this day, failed to comply with the plugging requirements under which Permits 66120 and 66121 were issued. The State Engineer concludes that the continued existence of these abandoned wells may result in contamination of the ground water or may otherwise pose a hazard to the health or safety of the general public.

RULING

The protest to Applications 77233 and 77234 is upheld and Applications 77233 and 77234 are hereby denied on the grounds that their approval would violate the provision of NRS § 534.120 and would threaten to prove detrimental to the public interest. Additionally the Beatty Water and Sanitation District is hereby ordered to plug the wells formerly held under abrogated Permits 55879 and 55880 as prescribed under chapter 534 of the NAC within 180 days from the date of this ruling.

Respectfully submitted,



FOR TRACY TAYLOR, P.E.
State Engineer

TT/MB/jm

Dated this 20th day of
April 2009