

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

IN THE MATTER OF APPLICATIONS)
64678 AND 64679 FILED TO)
APPROPRIATE THE UNDERGROUND)
WATERS OF THE DELAMAR)
VALLEY HYDROGRAPHIC BASIN)
(182), LINCOLN COUNTY, NEVADA.)

RULING
5985

GENERAL

I.

Application 64678 was filed on December 11, 1998, by the Lincoln County Water District and Vidler Water Company, Inc., to appropriate 10.0 cubic feet per second (cfs) of water from an underground source within the Delamar Valley Hydrographic Basin for the irrigation of 1,280 acres of land described as being located within portions of Sections 30 and 31, T.5S., R.64E., and Sections 25 and 36, T.5S., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T.5S., R.64E., M.D.B.&M.¹ The remarks section of the application indicates that the land described as the proposed place of use was to be acquired through a land exchange with the Bureau of Land Management.

II.

Application 64679 was filed on December 11, 1998, by the Lincoln County Water District and Vidler Water Company, Inc., to appropriate 10.0 cfs of water from an underground source within the Delamar Valley Hydrographic Basin for the irrigation of 1,280 acres of land described as being located within Sections 25 and 26, and portions of Sections 23 and 24, T.7S., R.63E., 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 24, T.7S., R.63E., M.D.B.&M.² The remarks section of the application indicates that the land described as the proposed place of use was to be acquired through a land exchange with the Bureau of Land Management.

III.

Applications 64678 and 64679 were timely protested by the United States Department of Interior, National Park Service on various grounds as hereinafter summarized.^{1,2} The National Park

¹ File No. 64678, official records in the Office of the State Engineer.

² File No. 64679, official records in the Office of the State Engineer.

Service asserts that there is no water available for appropriation because the committed water resources in this valley and the valley's downgradient exceed the ground-water recharge, the approval and development of the proposed appropriations will impair the water rights of the United States and the public interest would not be served by diminishing or impairing the water-related resources in the Lake Mead National Recreation Area.

Applications 64678 and 64679 were timely protested by the United States Department of Interior, Fish and Wildlife Service (USFWS) on various grounds as hereinafter summarized.^{1,2} The USFWS asserts that granting the applications may cause injury to USFWS-owned senior water rights, water may not be available to appropriate in the manner described, injury to National wildlife refuges, and no control of the proposed place of use; therefore, the Applicant is unable to place the water to beneficial use.

Applications 64678 and 64679 were timely protested by the Virgin Valley Water District (VVWD) on various grounds as hereinafter summarized.^{1,2} The VVWD asserts that the proposed place of use is not suitable for irrigation, the applications were filed to tie up the resource for speculative purposes; thus, approval of the applications is not in the public interest, the Applicant does not own or control the proposed place of use, the use of water as proposed will adversely impact the VVWD's existing water rights both quantitatively and qualitatively, the use of water as proposed will adversely impact existing springs and seeps that provide water for wildlife, the use of water as proposed due to the regional character of the water resource will adversely impact water rights other than those held by the VVWD, and Applicant Vidler Water Company, Inc. is barred from appropriating the public waters of Nevada due to deficiencies in its status with the Nevada Secretary of State.

Applications 64678 and 64679 were timely protested by the Las Vegas Valley Water District on various grounds including if considering the existing ground-water permits and pending applications, the basin would be overappropriated; thus, the granting of the applications could potentially injure prior rights and is not in the best interest of the public.^{1,2}

Applications 64678 and 64679 were timely protested by the United States Department of Interior, Bureau of Indian Affairs (USBIA) on various grounds as hereinafter summarized.^{1,2} The USBIA asserts that the proposed use of the water will interfere with water rights of the Moapa Band of Paiute Indians, the proposed source of water is hydraulically connected to the ground-water

basins for which it asserts water rights and the proposed use could impact the environment of another basin causing declines in spring flow, stream flow, ground-water levels and alter the direction of ground-water flow on local and regional scales, could result in changes in ground-water quality, and could affect the discharge of the Muddy River Springs area.

FINDINGS OF FACT

I.

In State Engineer's Ruling No. 5875, the State Engineer addressed applications originally filed by the Las Vegas Valley Water District and now held by the Southern Nevada Water Authority to appropriate ground water from the Delamar Valley Hydrographic Basin.³ In that ruling, the State Engineer found the perennial yield of the Delamar Valley Hydrographic Basin to be 2,550 acre-feet annually. The State Engineer finds that with the issuance of State Engineer's Ruling No. 5875 there is insufficient water available to support the amounts filed for under Applications 64678 and 64679.

II.

The Applications indicate the Applicant does not own or control the proposed place of use and there is no information contained in the file that in 11 years it has obtained control over the proposed place of use. Therefore, the State Engineer finds the Applicant is unable to place the water to beneficial use.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:⁵

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

³ State Engineer's Ruling No. 5875, dated July 9, 2008, official records in the Office of the State Engineer.

⁴ NRS chapters 533 and 534.

⁵ NRS 533.370(5).

- 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 there is insufficient ground water available in the quantity requested for appropriation in the Delamar Valley Hydrographic Basin; therefore, the granting of Applications 64678 and 64679 would conflict with existing rights and thus threaten to prove detrimental to the public interest.

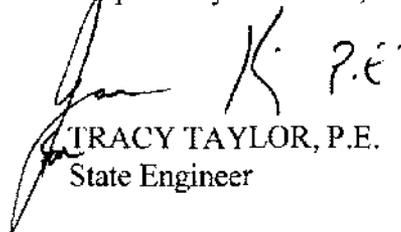
IV.

The State Engineer concludes that to grant applications filed for irrigation purposes on land that the Applicant does not own or control would threaten to prove detrimental to the public interest.

RULING

Applications 64678 and 64679 are hereby denied on the grounds that there is insufficient unappropriated water in the source and the granting of the Applications would conflict with existing rights and threaten to prove detrimental to the public interest. No ruling is made on the merits of the other protest grounds.

Respectfully submitted,

 P.E.
TRACY TAYLOR, P.E.
State Engineer

TT /jm

Dated this 29th day of
April, 2009.