

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

IN THE MATTER OF APPLICATIONS)
74520, 74521, 74522, 74523, 74524, 74525,)
74526, 74527, 74528, 74529, AND 74530)
FILED TO APPROPRIATE THE PUBLIC)
WATERS FROM AN UNDERGROUND)
SOURCE WITHIN THE LITTLE FISH)
LAKE VALLEY HYDROGRAPHIC BASIN)
(150), NYE COUNTY, NEVADA.)

RULING
599 1

GENERAL

I.

Application 74520 was filed on July 19, 2006, by Colvin & Son, LLC, to appropriate 7.0 cubic feet per second (cfs) of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 133.0 acres of land within portions of the S $\frac{1}{2}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, and the SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20, all within T.12N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T.12N., R.49E., M.D.B.&M.¹

II.

Application 74521 was filed on July 19, 2006, by Colvin & Son, LLC, to appropriate 7.0 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 160.0 acres of land within the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 3, and the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 4, all within T.11N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, T.11N., R.49E., M.D.B.&M.²

III.

Application 74522 was filed on July 19, 2006, by Colvin & Son, LLC, to appropriate 4.0 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 72.81 acres of land within the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 6, in

¹ File No. 74520, official records in the Office of the State Engineer.

² File No. 74521, official records in the Office of the State Engineer.

T.11N., R.50E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T.11N., R.50E., M.D.B.&M.³

IV.

Application 74523 was filed on July 19, 2006, by Colvin & Son, LLC, to appropriate 2.5 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 40.0 acres of land within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T.11N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T.11N., R.49E., M.D.B.&M.⁴

V.

Application 74524 was filed on July 19, 2006, by Colvin & Son, LLC, to appropriate 2.0 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 35.04 acres of land within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T.11N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T.11N., R.49E., M.D.B.&M.⁵

VI.

Application 74525 was filed on July 19, 2006, by Colvin & Son, LLC, to appropriate 2.0 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 37.52 acres of land within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T.11N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T.11N., R.49E., M.D.B.&M.⁶

VII.

Application 74526 was filed on July 19, 2006, by Colvin & Son, LLC, to appropriate 2.5 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 40.0 acres of land within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T.11N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T.11N., R.49E., M.D.B.&M.⁷

³ File No. 74522, official records in the Office of the State Engineer.

⁴ File No. 74523, official records in the Office of the State Engineer.

⁵ File No. 74524, official records in the Office of the State Engineer.

⁶ File No. 74525, official records in the Office of the State Engineer.

⁷ File No. 74526, official records in the Office of the State Engineer.

VIII.

Application 74527 was filed on July 19, 2006, by Colvin & Son, LLC, to appropriate 2.5 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 40.0 acres of land within the NE¼ SE¼ of Section 33, in T.11N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SE¼ of Section 33, T.11N., R.49E., M.D.B.&M.⁸

IX.

Application 74528 was filed on July 19, 2006, by Colvin & Son, LLC, to appropriate 6.0 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 115.45 acres of land within the E½ SW¼ and the SW¼ SW¼ of Section 14, T.10N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SW¼ of Section 14, T.10N., R.49E., M.D.B.&M.⁹

X.

Application 74529 was filed on July 19, 2006, by Colvin & Son, LLC, to appropriate 4.0 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 80.0 acres of land within the E½ SE¼ of Section 14, T.10N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 14, T.10N., R.49E., M.D.B.&M.¹⁰

XI.

Application 74530 was filed on July 19, 2006, by Colvin & Son, LLC, to appropriate 4.0 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 80.0 acres of land within the E½ NE¼ of Section 22, T.10N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 22, T.10N., R.49E., M.D.B.&M.¹¹

XII.

Applications 74520, 74521, 74522, 74523, 74524, 74525, 74526, 74527, 74528, 74529, and 74530 were protested by Jeff Kerbel. The grounds of his protest are summarized as follows:^{1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11}

⁸ File No. 74527, official records in the Office of the State Engineer.

⁹ File No. 74528, official records in the Office of the State Engineer.

¹⁰ File No. 74529, official records in the Office of the State Engineer.

¹¹ File No. 74530, official records in the Office of the State Engineer.

- a. The granting of these applications will injure his water rights put to beneficial use through domestic, irrigation, stock water, hydroelectric and commercial fish hatchery uses and will use water that he believes is recharge in the Little Fish Lake Valley Hydrographic Basin;
- b. The amount of water requested by these applications is essentially all the water in Little Fish Lake Valley that has been determined to be “surplus” based on the “Nicholes Report” that is contestable and not properly founded;
- c. The economic viability of the proposed irrigation is questionable and therefore suggests some purpose other than an economically viable farming venture, perhaps speculation and is wasteful.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 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 Applications 74520, 74521, 74522, 74523, 74524, 74525, 74526, 74527, 74528, 74529, and 74530, 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.

An examination of the records of the Office of the State Engineer show that only water rights owned by the applicant, Colvin & Son, LLC, predominate near the proposed points of diversion and include surface and underground water.¹² The only other claimant in close proximity is the Bureau of Land Management with a claim of Vested Right, V-03181 on a spring for stock water in the S½ SE¼, of Section 29, T.11N., R.49E., M.D.B.&M. The State Engineer finds that there are no other existing water rights at the proposed points of diversion.

¹² Nevada Division of Water Resources Water Rights Database, Special Hydrographic Abstract.

III.

An examination of the records of the Office of the State Engineer show that water rights claimed by the Protestant include only V-02055, which is for the irrigation of 70 acres from the waters of Hot Creek Canyon, a surface water source. Other uses of this water as noted in the claim of vested right are domestic and stock water. The State Engineer finds that the Protestant has no permitted water rights for hydroelectric power generation or commercial fish hatcheries; and therefore can make no claim of beneficial use for those purposes.

IV.

The 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. The perennial yield cannot be more than the natural recharge to a ground-water basin and in some cases is less. If the perennial yield is exceeded, ground-water levels will decline and steady-state conditions will not be achieved, a situation commonly referred to as ground-water mining. Additionally, withdrawals of ground water in excess of the perennial yield may contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased economic pumping lifts, and land subsidence.¹³

The United States Geological Survey (USGS) estimates the perennial yield of the Little Fish Lake Valley Hydrographic Basin is approximately 10,000 acre-feet.¹⁴ The committed ground-water resource in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Little Fish Lake Valley Hydrographic Basin is currently approximately 4,784 acre-feet annually.¹⁵ The State Engineer finds that there is approximately 5,216 acre-feet of ground water in the Little Fish Lake Valley Hydrographic Basin currently available for appropriation.

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

¹⁴ F. Eugene Rush and Duane E. Everett, *Water-Resources Appraisal of the Little Fish Lake, Hot Creek, and Little Smoky Valleys, Nevada*, Water Resources-Reconnaissance Series Report 38, (United States Geological Survey), May 1966.

¹⁵ Special Hydrologic Basin Abstract, Water rights Database, Basin 150, April 29, 2009, official records within the Office of the State Engineer.

V.

The USGS prepared a water resource report on the Little Fish Lake Valley Hydrographic Basin.¹⁵ This report indicates that the growing season is short and that the most probable average growing season is about 75 days with a variance of as much as 40 days in any single year. The reported water flow data indicates that no surface water flows out of the Little Fish Lake Valley Hydrographic Basin into the Hot Creek Valley Hydrographic Basin were reported or measured. Ground water in the Little Fish Lake Valley Hydrographic Basin was described as moving toward the central phreatophyte trough of the valley where most of the flow is discharged to evaporation and a small amount of water, estimated at 200 acre-feet, moves southward beneath the alluvial divide to outflow into the headwaters of Hot Creek Valley Hydrographic Basin. The State Engineer finds that the growing season for Little Fish Lake Valley Hydrographic Basin is 35 to 115 days, and that a minimal amount, 200 acre-feet, of ground water from Little Fish Lake Valley Hydrographic Basin contributes to the water inventory of the Hot Creek Valley Hydrographic Basin.

VI.

The historical duty for underground water rights granted in Little Fish Lake Valley is 3.0 acre-feet per acre as is evidenced by Permit 2560, Certificate 8023. On February 22, 2008, the State Engineer issued Permits 71659, 71660, 71661, and 71662 at a duty of 3.0 acre-feet per acre. The Applicant, Colvin & Son, LLC, appealed the duty granted claiming that irrigation at this location required 4.0 acre-feet per acre. In September 2008, the Office of the State Engineer and Colvin & Son, LLC entered into a stipulated agreement.¹⁶ The stipulated agreement granted a duty of 3.5 acre-feet and a consumptive use of 2.4 acre-feet per acre. The State Engineer finds that Applications 74520, 74521, 74522, 74523, 74524, 74525, 74526, 74527, 74528, 74529, and 74530 present a similar situation and incorporates the stipulated agreement into this ruling; therefore, these applications will be considered at a duty of 3.5 acre-feet and a consumptive use of 2.4 acre-feet per acre.

VII.

Nevada Revised Statute § 533.035 provides that beneficial use shall be the basis, the measure and the limit of the right to the use of water. An examination of the maps for Applications 74528 and 74530 reveals that the proposed place of use is the lake bed for Upper

¹⁶ File No. 71659, official records in the Office of the State Engineer.

Fish Lake. This observation was confirmed by examining USGS topographic maps and Google Earth air photography. AutoCAD measurements using the Applicant's map of the areas in Upper Fish Lake determined to be 33.48 acres under Application 74528 and 72.86 acres under Application 74530. Nevada Revised Statute § 533.070 provides that the quantity of water that may be appropriated is limited to such water as shall be reasonably required for the beneficial use to be served. The State Engineer finds that acreage within Upper Fish Lake must be removed from these applications as non-irrigable; therefore, under Application 74528 the proposed place of use acreage is reduced to 81.97 acres and under 74530 the proposed place of use acreage is reduced to 7.14 acres.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁷

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁸

- 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 there are no conflicts with existing water rights at the proposed points of diversion.

IV.

The State Engineer concludes that there is sufficient unappropriated water in the Little Fish Lake Valley Hydrographic Basin and that the approval of Applications 74520, 74521, 74522, 74523, 74524, 74525, 74526, 74527, 74528, 74529, and 74530 would not over appropriate the ground water of the Little Fish Lake Valley Hydrographic Basin.

¹⁷ NRS chapter 533 and 534.

¹⁸ NRS § 533.370 (5).

V.

The State Engineer concludes that ground-water contribution of the Little Fish Lake Valley Hydrographic Basin to the water inventory of the Hot Creek Valley Hydrographic Basin is minimal and that the approval of Applications 74520, 74521, 74522, 74523, 74524, 74525, 74526, 74527, 74528, 74529, and 74530 would not conflict with existing rights in the Hot Creek Valley Hydrographic Basin.

VI.

The State Engineer concludes that Applications 74520, 74521, 74522, 74523, 74524, 74525, 74526, 74527, 74528, 74529, and 74530 will be issued at a duty consistent with the stipulated agreement of September 2008.

VII.

The State Engineer concludes that acreage within Upper Fish Lake must be removed from Applications 74528 and 74530 as non-irrigable; therefore, in conflict with the beneficial use requirements of Nevada water law.

RULING

The protests to Applications 74520, 74521, 74522, 74523, 74524, 74525, 74526, 74527, 74528, 74529, and 74530 are hereby overruled and the Applications granted subject to:

1. Permit terms;
2. Existing rights;
3. The payment of statutory permit fees; and
4. Period of use is limited to 120 days.

Respectfully submitted,



TRACY TAYLOR, P.E.

State Engineer

TT/WHR/jm

Dated this 4th day of

June, 2009