

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

IN THE MATTER OF APPLICATIONS 64668,)
64669, 77722 AND 77723 FILED TO)
APPROPRIATE THE UNDERGROUND)
WATER OF THE DRY LAKE VALLEY)
HYDROGRAPHIC BASIN (181) LINCOLN)
COUNTY, NEVADA.)

RULING

5993

GENERAL

I.

Application 64668 was filed on December 11, 1998, by Lincoln County and Vidler Water Company, Inc., now held by the Lincoln County Water District and Vidler Water Company, Inc. (Vidler), to appropriate 10 cubic feet per second (cfs) of underground water from the Dry Lake Valley Hydrographic Basin for the irrigation of 1,280 acres described as being located within Sections 18, 19 and 20, T.1S., R.65E., 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 said Section 20. In Item 12, the remarks section of the application, it indicates that the land within the proposed place of use was to be acquired through a land exchange with the Bureau of Land Management.¹

II.

Application 64669 was filed on December 11, 1998, by Lincoln County and Vidler Water Company, Inc., now held by the Lincoln County Water District and Vidler Water Company, Inc., to appropriate 10 cfs of underground water from the Dry Lake Valley Hydrographic Basin for the irrigation of 1,280 acres described as being located within the E $\frac{1}{2}$ of Section 33 and Section 34, T.5N., R.64E., M.D.B.&M., the E $\frac{1}{2}$ of Section 4 and Section 9, T.4N., R.64E. 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 said Section 33. In Item 12, the remarks section of the application, it indicates that the land within the proposed place of use was to be acquired through a land exchange with the Bureau of Land Management.²

III.

Application 77722 was filed on December 29, 2008, by the Lincoln County Water District and Vidler Water Company, Inc., to change the point of diversion and place of use of 5.0 cfs, a portion of the water applied for under Application 64668, for the irrigation of 610 acres described as

¹ File No. 64668, official records in the Office of the State Engineer.

² File No. 64669, official records in the Office of the State Engineer.

being located within Section 5 and the E½ E½ of Section 6, T.1S., R.65E., M.D.B.&M. The proposed point of diversion is located within the SW¼ SE¼ of said Section 5, with the existing point of diversion being located within the SW¼ NE¼ of Section 20, T.1S., R.65E., M.D.B.&M. The existing place of use is comprised of 1,280 acres of land located within Sections 18, 19 and 20, T.1S., R.65E., M.D.B.&M.³

IV.

Application 77723 was filed on December 29, 2008, by the Lincoln County Water District and Vidler Water Company, Inc., to change the point of diversion and place of use of 5.0 cfs, a portion of the water applied for under Application 64668, for the irrigation of 610 acres described as being located within Section 5 and the E½ E½ of Section 6, T.1S., R.65E., M.D.B.&M. The proposed point of diversion is located within Lot 1, T.1S., R.65E., M.D.B.&M., with the existing point of diversion being located within the SW¼ NE¼ of Section 20, T.1S., R.65E., M.D.B.&M. The existing place of use is comprised of 1,280 acres of land located within Sections 18, 19 and 20, T.1S., R.65E., M.D.B.&M.⁴

V.

Applications 64668 and 64669 were timely protested by the United States Department of Interior, National Park Service, the United States Department of Interior, Bureau of Indian Affairs, the United States Department of Interior, Fish and Wildlife Service, the Virgin Valley Water District and the Las Vegas Valley Water District on grounds summarized below.

1. There is no water available for appropriation because committed water resources exceed ground-water recharge.
2. The approval and development of the proposed appropriations will impair the water rights of the United States, National Park Service by reducing the flow of the Muddy River and by reducing the discharge from the White River Flow System thereby potentially reducing the flow of the springs at the Lake Mead National Recreational Area. The approval and development of the proposed appropriations will impair water rights of the United States, Fish and Wildlife Service at the Pahrangat National Wildlife Refuge and the Moapa Valley National Wildlife Refuge because the ground-water withdrawal is proposed in a ground-water basin that is upgradient, but hydrologically connected to the basins

³ File No. 77722, official records in the Office of the State Engineer.

⁴ File No. 77723, official records in the Office of the State Engineer.

in which it has water rights. The use of the water could impact the existing rights of the Virgin Valley Water District and could adversely impact the potable water source for the residents of the City of Mesquite, the Town of Bunkerville and others within the Water District's service area. The approval and development of the proposed appropriations will impair the water rights of the United States, Bureau of Indian Affairs held for the benefit of the Moapa Band of Paiute Indians in the White River Flow System.

3. The public interest will not be served because the water resources of the Lake Mead National Recreational Area will be diminished or impaired and the Applicant does not own or control the land on which it proposes to withdraw or use the water and no application for land exchange is on file or in preparation involving these lands, and the springs and seeps upon which wildlife exist will be adversely impacted.
4. The proposed place of use is not suitable and the applications were filed to tie up the resource for speculative purposes; thus, approval of the applications is not in the public interest.
5. The Applicant is barred from appropriating the public waters of Nevada due to deficiencies in its status with the Nevada Secretary of State.

FINDINGS OF FACT

I.

By letter dated October 20, 2008, Vidler, on behalf of both Applicants, requested the State Engineer move forward with Application 64668. No mention was made of Application 64669. The change applications were filed shortly after the date of the letter. The letter noted that in State Engineer's Ruling No. 5875,⁵ the State Engineer determined the perennial yield of Dry Lake Valley to be 12,700 afa, the committed consumptive use of the ground-water rights to be 57 afa, reserved 50 afa in the basin for future growth and development and granted 11,584 afa leaving 1,009 afa of unappropriated water in the basin for which the Applicant has the next senior application in the basin. The letter noted that Vidler was purchasing 612.81 acres of private land in the basin located in Sections 5 and 6, T.1S., R.65E., M.D.B.&M. for which the Applicant intended to file an application to change the point of diversion and place of use. Vidler proposed that given the extensive hearings conducted prior to the issuance of State Engineer's Ruling No. 5875, it would

⁵ State Engineer's Ruling No. 5875, dated July 9, 2008, official records in the Office of the State Engineer.

seem that most, if not all, of the protest grounds related to Application 64668 have been previously addressed by the State Engineer.

By letter dated December 29, 2008, Vidler noted that the BLM land exchange program in Nevada has ceased in favor of a managed land sales program in southern Nevada. Thus, the opportunity for acquisition of the federally managed property identified as the point of diversion and place of use under Application 64668 became disfavored; therefore, Vidler was purchasing property of sufficient size and character to place to beneficial use the water remaining for appropriation in Dry Lake Valley. The State Engineer finds public information indicates that Vidler has completed purchase of the property and owns the land identified under the change applications. The State Engineer finds it is reasonable to act on both applications for appropriation as with the issuance of the first application there is not sufficient water available for appropriation to grant Application 64669. The State Engineer finds it is also reasonable to act on the change applications at this time and there is no reason to hold any of the applications for action later.

II.

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 64668 and 64669 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.

III.

The State Engineer finds on February 4 through 15, 2008, an administrative hearing was held regarding applications to appropriate water in the Dry Lake Valley Hydrographic basin. Weeks of testimony and evidence were received, which resulted in the issuance of State Engineer's Ruling No. 5875. As noted by Vidler, in that ruling the State Engineer determined the perennial yield of Dry Lake Valley to be 12,700 afa, the committed consumptive use of the ground-water rights to be 57 afa, reserved 50 afa in the basin for future growth and development and granted 11,584 afa leaving 1,009 afa of unappropriated water in the basin for which the Applicant has the next senior application in the basin. The State Engineer finds it is reasonable to rely on the extensive evidence provided in the earlier hearing and adopts and incorporates those findings and conclusions and finds there is 1,009 afa available for appropriation in Dry Lake Valley. The State Engineer finds Applications 64668 and 64669 were both filed to appropriate 10 cfs under each

application. Under a diversion rate expanded analysis, these two applications are requesting to appropriate 14,480 afa. The State Engineer finds there is only sufficient water to take action on Application 64668 and Application 64669 is subject to denial for lack of water available for appropriation. The State Engineer finds based on the previous administrative record that the use of the water will not impair the water rights of the United States, National Park Service, Fish and Wildlife Service, Bureau of Indian Affairs or the Virgin Valley Water District.

IV.

The State Engineer finds under the change applications, the Applicant is still requesting the use of water for the same manner of use, but due to issues of land acquisition, the place of use has changed to the location now owned by Applicant Vidler; therefore, the Applicant has control over the proposed place of use and has the ability to place the water to beneficial use.

V.

The State Engineer finds the Applicant is a water district created by the Nevada Legislature and a company whose standing is listed as active with the Nevada Secretary of State; therefore, the protest issue that the Applicant is barred from appropriating the public waters of Nevada due to deficiencies in its status with the Nevada Secretary of State has no merit.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁶

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁷

- 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.

⁶ NRS chapters 533 and 534.

⁷ NRS § 533.370(5).

III.

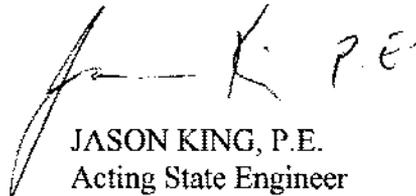
The State Engineer concludes since there is unappropriated water in the source and there is substantial evidence that the use of the water proposed under Application 64668 will not impair existing rights or protectable interests in existing domestic wells, the use of water does not threaten to prove detrimental to the public interest.

RULING

The protests to Application 64668 are hereby overruled and the application is granted in the amount of 1,009 acre-feet annually. Application 64669 is hereby denied on the grounds there is no unappropriated water available to support the quantity requested for irrigation. Change Applications 77722 and 77723 are hereby granted for a total combined duty of 1,009 acre-feet annually. The Applications are granted subject to:

1. Existing rights; and the
2. Payment of the statutory fees;

Respectfully submitted,


JASON KING, P.E.
Acting State Engineer

JK/jm

Dated this 4th day of
June 2009
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