

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

IN THE MATTER OF APPLICATION 79699)
FILED TO CHANGE THE PLACE OF USE AND)
MANNER OF USE OF A PORTION OF THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE PREVIOUSLY APPROPRIATED)
UNDER PERMIT 15893, CERTIFICATE 5717,)
AND APPLICATION 79783 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE)
AMARGOSA DESERT HYDROGRAPHIC)
BASIN (230), NYE COUNTY, NEVADA.

RULING
#6076

GENERAL

I.

Application 79699 was filed on March 18, 2010, by Amargosa Valley Solar I, LLC, to change the place of use and manner of use of 1.75 cubic-feet per second (cfs) not to exceed 400 acre-feet annually (afa), a portion of underground water previously appropriated under Permit 15893, Certificate 5717. The existing manner of use is for irrigation purposes and the proposed manner of use is for industrial purposes. The area to be removed from irrigation is described as being 120.6 acres within the NE¼ of Section 23, T.16S., R.48E., M.D.B.&M. The proposed place of use is described as being located within portions of Sections 5, 6, 7, 8, 17 and 18, T.16S., R.49E., M.D.B.&M. and portions of Sections 1, 2, 11, 12, 13 and 14, T.16S., R.48E., M.D.B.&M. The existing and proposed point of diversion is described as being located within the NE¼ NE¼ of Section 23, T.16S., R.48E., M.D.B.&M.¹

II.

Application 79783 was filed on April 15, 2010, by Amargosa Valley Solar I, LLC, to appropriate 2.0 cfs not to exceed 400 afa for industrial cooling purposes. The proposed place of use is described as being located within portions of Sections 5, 6, 7, 8, 17 and 18, T.16S., R.49E., M.D.B.&M. and portions of Sections 1, 2, 11, 12, 13 and 14, T.16S., R.48E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 23, T.16S., R.48E., M.D.B.&M. The application indicates that it is being filed to provide for a

¹ File No. 79699, official records in the Office of the State Engineer.

second well in support of the proposed solar project and Applications 79699 and 79783 will be supplemental not to exceed 400 afa; no additional water is sought under Application 79783.²

III.

Applications 79699 and 79783 were timely protested by John F. Bosta and Kevin R. Emmerich. The protests of Mr. Emmerich appear to be copies of the protests of Mr. Bosta; however, there appears to be some discrepancies. The complete protests from each Protestant can be found within the associated application files. The following is a brief summary of the protest grounds that could be recognized within the protests:^{1,2}

1. Pursuant to NRS § 533.330, no application shall be for the water of more than one source to be used for more than one purpose. The point of diversion of Application 79699 is the same as irrigation Permit 15893; such that, there would be two uses in one well.
2. The applications are insufficient and ambiguous.
3. The Applicant Amargosa Solar I, LLC has no recorded lease or easement with Geneerco.
4. Item 2 of Application 79699 states 1.75 cfs (400 afa), should read 1.75 cfs not to exceed 400 afa. Item 2 of Application 79783 states 2.0 cfs (400 afa), should read 2.0 cfs not to exceed 400 afa, because 2.0 cfs equals 1,447.9475 afa.
5. Application 79783, the proposed use is shown as Industrial cooling; this description is incomplete.
6. The distribution lines transporting the water from the point of diversion (POD) to the place of use (POU) are not illustrated on the supporting map.
7. An additional 200 afa of water will be needed to wash the mirrors.
8. During the June 1, 2010, Nye County Board of Commissioners meeting, the attorney for Solar Millennium said he had met with the State Engineer, Fish and Wildlife, National Park Service, Nye County and BLM and they have all agreed to the mitigation of water supply and that the public has been excluded from these meetings. The mitigation agreement will be disclosed in the final EIS, which will be released sometime in July 2010.
9. This application might have an adverse affect on my domestic well supply.
10. The State Engineer should require an agreement that no power be sold outside the state of Nevada (citing to NRS § 533.372)
11. Item 15, "Water will be used for industrial use in two solar plants" is an insufficient description.
12. Item 16, Miscellaneous remarks, "Water rights may be temporarily moved back to irrigation while the power plants are being constructed" is two uses in one permit.
13. I request that a public hearing be held prior to a decision on the application(s).

² File No. 79783, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Nevada Revised Statutes § 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 Protestants have filed detailed protests and the Applicant has filed an Answer to Protest for each protest.^{1,2} The State Engineer finds that in the case of Applications 79699 and 79783 there is no need to supplement the records of the Office of the State Engineer with additional information relating to the applications and protests and an administrative hearing is not necessary.

II.

To acquire a water permit, an application must be made on an approved form and filed with the State Engineer.³ Pursuant to Nevada water law, the application must be supported by a map prepared in a prescribed form by a water rights surveyor. The supporting map must show the point of diversion and place of use of the water within the proper legal subdivisions. No application shall be for the water of more than one source to be used for more than one purpose.⁴ When the application and map are properly completed, a notice must be sent to a newspaper of general circulation in the area where the application was filed. This notice is published for approximately 30 days.⁵ Interested parties may file a formal protest up until 30 days after the last day of publication explaining their objections to the application and requesting denial of the application or other appropriate action by the State Engineer.⁶ After the expiration of the protest period, the application is ready for action by the State Engineer.

The Protestants make several claims regarding the inadequacy of the applications and supporting map claiming generally that they are insufficient and ambiguous. When an application and map is filed with the Division of Water Resources (Division), it undergoes a rigorous review process to ensure its accuracy and that it meets the standards for acceptance by the Division. A review of the records on file in the Office of the State Engineer shows that the applications and map were reviewed and corrections were requested by certified notice of March 29, 2010.¹ The Applicant made the necessary corrections and the applications were sent to

³ NRS § 533.325.

⁴ NRS § 533.330.

⁵ NRS § 533.360.

⁶ NRS § 533.365.

publication on April 23, 2010. The State Engineer finds that the applications and supporting map were properly reviewed by Division staff and, after correction, met all statutory requirements.

III.

The protests make several claims that the applications violate NRS § 533.330. This statute states:

NRS 533.330 Application limited to water of one source for one purpose; individual domestic use may be included. No application shall be for the water of more than one source to be used for more than one purpose; but individual domestic use may be included in any application with the other use named.

Application 79699 lists its proposed use under Item #3 as "Industrial." Application 79783 lists its proposed use under Item #3 as "Industrial cooling." The State Engineer finds that the applications were each filed for one manner of use as evidenced on the application forms.

IV.

Application 79699 changes a portion of Permit 15893, Certificate 5717, without changing the point of diversion. The protests claim that the Applicant will have two manners of use in one well under two separate permits. The statement that there will be two permits for differing manners of use in a single well would be correct if Application 79699 is approved; however, there is no specific law, regulation or policy that would prohibit this situation.

As an example, a brief search of the Nevada Division of Water Resource's database shows Permits 68513, 68514 and 68515 share the same point of diversion. The manner of use for Permit 68513 is stock-water use and the manner of use for Permits 68514 and 68515 is irrigation use. In this case, the permittee was not allowed to file a single application for both stock-water and irrigation use because that would violate NRS § 533.330; therefore, the permittee properly filed separate applications for each manner of use for the same well and the applications were approved and permitted.

The State Engineer finds that there is no specific statute or regulation that prohibits multiple water rights with differing manners of use from using the same well.

V.

Records of the Office of the State Engineer show that the underground water appropriated under Permit 15893, Certificate 5717, is in the name of Geneerco, Inc., (Geneerco) and change Application 79699 was filed in the name of Amargosa Valley Solar I, LLC. Geneerco has sent a letter to the State Engineer authorizing the filing of Application 79699 by Amargosa Valley Solar I, LLC.⁷ The letter indicates that Geneerco and the Applicant are negotiating a lease agreement and requests that the State Engineer move forward with the application process but withhold final approval of Application 79699 until finalization of the lease. The State Engineer finds that the letter of Geneerco is sufficient to move the application process forward.

The protests also allege that Amargosa Valley Solar I, LLC, does not have the authority to drill a well on Geneerco property. Based on the Geneerco letter,⁷ the State Engineer finds that there is a reasonable expectation that the Applicant will have a legal right to access the property and drill a well under Application 79783 and to complete any works necessary on the existing well under Application 79699.

VI.

The protests indicate an issue with Item No. 2 of Applications 79699 and 79783, because Item No. 2 of Application 79699 states 1.75 cfs (400 afa), and the protestants believe it should read 1.75 cfs not to exceed 400 afa. Also, Item 2 of Application 79783 states 2.0 cfs (400 afa), and the protestants believe it should read 2.0 cfs not to exceed 400 afa, because 2.0 cfs equals 1,447.9475 afa.

After review of the applications, it is clear that the Applicant intends to change 400 afa at a diversion rate of 1.75 cfs under Application 79699 and that the Applicant is also seeking a second well location for the same 400 afa at a diversion rate of 2.0 cfs under Application 79783.^{1,2} Applications 79699 and 79783 would be issued supplemental not to exceed 400 afa and the diversion rate requested would allow the entire duty of water to be pumped at either location. The Applicant has indicated that the proposed point of diversion under Application

⁷ See, Geneerco, Inc., letter to State Engineer, April 16, 2010, File No. 79699, official records in the Office of the State Engineer.

79783 would be the primary well for the project and the point of diversion under Application 79699 would be used as a back-up well.⁸

The State Engineer may require any additional information needed prior to approval or rejection of an application.⁹ The State Engineer finds that the applications were filed with sufficient information to clearly show the Applicant's intent and no correction to Item No. 2 of the applications is necessary or mandated by statute, regulation or policy.

VII.

The protests claim that the distribution lines transporting the water from the POD to the POU are not illustrated on the supporting map. The State Engineer finds that this protest issue is without merit and that the Applicant has complied with the requirements for filing a supporting map as evidenced by acceptance of the map by the Office of State Engineer.

VIII.

The Protestants contend that the Applicant will need an additional 200 afa of water to wash mirrors associated with the solar project. The State Engineer finds that if the Applicant needs an additional 200 afa of water, the Applicant must comply with Nevada water law by filing an application; however, at this time no such application is pending before the State Engineer.

IX.

On June 28, 2010, the Applicant filed Notices of Stipulation for Applications 79699 and 79783, between the Applicant and the United States Department of the Interior (DOI) on behalf of the Bureau of Land Management (BLM), Fish and Wildlife Service and National Park Service. The purpose of the stipulations was to resolve the protests filed by the DOI Bureaus against the applications. The DOI Bureaus withdrew the respective protests per the stipulations.^{1,2} The State Engineer finds that he was not a party to the stipulations and is not bound by any agreements between the Applicant and the DOI Bureaus.

The stipulations indicate that the Applicant has agreed to acquire 236 afa of existing water rights as mitigation. The protests state that during the June 1, 2010, Nye County Board of Commissioners meeting, the attorney for Solar Millennium said he had met with the State Engineer, Fish and Wildlife, National Park Service, Nye County and BLM and they have all

⁸ See, Item No. 12 on Application 79783, File No. 79783, official records in the Office of the State Engineer.

⁹ NRS § 533.375.

agreed to the mitigation of water supply and that the public has been excluded from these meetings. The mitigation agreement will be disclosed in the final EIS, which will be released sometime in July 2010. The State Engineer finds that he was not a party to the stipulations and is not bound by any agreements between the Applicant and the DOI Bureaus regarding mitigation water. The State Engineer further finds that there are no applications pending in this matter regarding the 236 afa of mitigation water mentioned above; therefore, no ruling or decisions can be made regarding this matter.

The protests also assert that the public was excluded from meetings. This is addressed by the Applicant in its Answer to Protests.^{1,2} In response, the Applicant stated:¹⁰

The Company has worked hard to involve the public throughout the planning process. Specifically, between March of 2009 and June of 2010 the Company held a three-day open house in Amargosa Valley, made multiple presentations to the Amargosa Town Advisory Board, made a presentation to the Nye County Board of County Commissioners and held two rounds of scoping and public meetings in Beatty, Amargosa Valley, Pahrump and Las Vegas. In addition, the public was provided an extensive comment period on the draft environmental impact statement. The Company has taken seriously its obligation to comply with all public notice and public participation requirements. Thus, the Company denies any claim that it has in any way failed to fulfill its public participation obligations.

The State Engineer finds that this portion of the protest claim is not relevant to the statutory requirements that he must consider in making a determination to approve or deny the applications; however, it is noted that it appears the Applicant has made considerable efforts to include the public.

X.

The protests allege the Applicant may temporarily move water back for irrigation use until construction of the solar plant project can proceed. Also, some water may be temporarily used for construction purposes, primarily dust control, during the construction phase of the project.^{1,2} The protests contend that the Applicant informing the State Engineer of his intention to temporarily change the water back to the irrigated land under the miscellaneous remarks of Application 79699 constitutes two uses of water in one permit.

The State Engineer finds that if the Applicant wants to temporarily use the subject water for irrigation purposes, construction purposes or any other use not permitted under Applications

¹⁰ Answer to Protest, pp. 10-11, File No. 79783, official records in the Office of the State Engineer.

79699 and 79783, the Applicant must comply with Nevada water law by filing temporary change applications; however, at this time no such applications are pending before the State Engineer. The State Engineer further finds that the Applicant's additional information provided in the remarks section of Application 79699 does not constitute an attempt to have two uses of water on one permit.

XI.

Nevada Revised Statute § 533.372 states:

Approval or rejection of application to use water to generate energy for export. Based upon the public interest and the economic welfare of the State of Nevada, the State Engineer may approve or disapprove any application of water to beneficial use or any application which contemplates a change in the place or beneficial use of water to a use involving the industrial purpose of generating energy to be exported out of this state.

The protests request that the State Engineer require an agreement that no power be sold outside the State of Nevada, based on NRS § 533.372. The statute does not require the State Engineer to deny a permit that will be used in connection with generating energy that will be exported, but does allow the State Engineer discretion to approve or deny such an application based on the public interest and the economic welfare of the State of Nevada.

In its Answer to protest, the Applicant indicates that some of the power produced from the facility will be used to meet the renewable energy requirement of electric providers in Nevada and acknowledges that some portion of the energy from the facility will likely be used in adjacent states. The Applicant provides a legislative history that indicates the intent of the statute was to discourage the development of nuclear power plants in Nevada, which would consume massive amounts of water. The Applicant also provides more recent statements from Governor Jim Gibbons and the Nevada Legislature indicating a favorable view of alternative energy development in Nevada regarding job creation, economic development and the environment.¹¹

The State Engineer finds that the proposed solar facility should not be denied based on NRS § 533.372.

¹¹ Answer to Protest, pp. 11-12, File No. 79783, official records in the Office of the State Engineer.

XII.

Protestant Emmerich and Protestant Bosta each claim that the proposed applications will harm their respective domestic wells. Mr. Emmerich indicates that his domestic well is located at a home he purchased on September 20, 2002, at 1830 E. McCoy Street, about 6.5 miles from the proposed point of diversion. The Applicant disputes the claim that Mr. Emmerich purchased this home based on public records that it has researched. Mr. Bosta's protest also claims to have purchased the same property at 1830 McCoy Street, where a domestic well is located.

The use of the domestic well is exempted from the requirement of obtaining a water right permit under Nevada water law.¹² It is the policy of the state to recognize the importance of domestic wells as appurtenances to private homes and to create a protectible interest in such wells and to protect their supply from unreasonable adverse effects, which are caused by municipal, quasi-municipal or industrial uses.¹³ In consideration of water right applications, the State Engineer must take into account whether the proposed change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024.¹⁴

Application 79699 is seeking to change a portion of the place of use and manner of use of Permit 15893; the point of diversion will remain unchanged. Application 79783 was filed to provide a second well location for the project and is located within 300 feet of the existing well drilled under Permit 15893. Neither application is seeking additional appropriations of water.

The State Engineer finds that the proposed change applications will not change the historic groundwater flow conditions and will not conflict with the Protestant's domestic well.

XIII.

The protests make numerous statements within which there could be found no grounds for denying the Applications. The State Engineer finds that, in addition to the specific issues addressed in the findings above, all remaining protests issues are without merit.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this determination.¹⁵

¹² NRS § 534.013 and § 534.180.

¹³ NRS § 533.024 (2).

¹⁴ NRS § 533.370 (5).

¹⁵ NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:¹⁴

- 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.

Based on the findings contained herein, the State Engineer concludes there is substantial evidence that the use of the water as proposed under change Applications 79699 and 79783 will not impair existing rights or protectible interests in existing domestic wells and will not threaten to prove detrimental to the public interest.

IV.

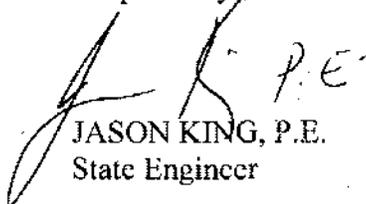
The protests related to Applications 79699 and 79783 were considered in this ruling and found to be without merit; therefore, the State Engineer concludes that these protests must be overruled and the applications may be considered for approval.

RULING

The protests are overruled and Applications 79699 and 79783 are hereby granted subject to:

- 1. The filing of a lease agreement with Geneerco; and
- 2. Existing rights; and
- 3. Payment of statutory permit fees.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 6th day of
December, 2010.