

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

IN THE MATTER OF APPLICATION 82479 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE SMITH)
VALLEY HYDROGRAPHIC BASIN (107), LYON)
COUNTY, NEVADA.)

RULING
#6347

GENERAL

I.

Application 82479 was filed on January 23, 2013, by F.I.M. Corp. to appropriate 0.033 cubic feet per second, not to exceed 2.0 acre-feet annually (afa), of underground water from the Smith Valley Hydrographic Basin for stockwater and domestic purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T.10N., R.24E., M.D.B.&M. The proposed place of use is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T.10N., R.24E., M.D.B.&M., and the NW $\frac{1}{4}$ NW $\frac{1}{4}$, a portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, a portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T.10N., R.24E., M.D.B.&M. The use is described as watering 750 head of sheep to be pastured in the area for a time period not to exceed 180 days per year. The remarks state that a replacement well was drilled for the Applicant's Permit 18879, Certificate 6052, and that this application is to appropriate water for stockwater use from the old well.¹

II.

Application 82479 was protested by GDA Degree, Inc. on the following grounds:¹

Our basin and specifically this area are currently over appropriated.

The increased withdrawal of water will only make worse the historic decline of water levels. This conflicts with existing water rights.

We have five irrigation wells that could be affected by this additional withdrawal of underground water.

The anticipated reduction in groundwater infiltration as lands are removed from irrigation for the downstream transfers of water by the Walker Basin Restoration

¹ File No. 82479, official records in the Office of the State Engineer.

Program established by Public Law 111-85 will impact water levels, compounded by the regions [sic] ongoing droughts.

Suggest that existing underground water rights could be relinquished for stockwater in lieu of the expansion of underground water rights.

The Protestant expressed hope that the situation could be corrected without any problems to the Applicant and requested that the application be issued, but with strict conditions that protect prior rights.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 533.365(4) 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 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.

The Protestant asserts that, if granted, the application will conflict with the Protestant's water rights, which include five irrigation wells, the nearest of which is approximately 10,000 feet away from the subject application's proposed point of diversion. Other groundwater rights not owned by the Applicant or Protestant are as close as 3,900 to 5,000 feet.^{1,2}

The State Engineer applied the standard Theis non-equilibrium equation and finds that Application 82479 would, at a radius of 500 feet and 365 days of pumping, lower the static water level less than 0.1 feet. At a greater radial distance, or a shorter time duration, the estimated effects would be even less. Even right at the proposed point of diversion, after 10 to 20 years, the drawdown is estimated by the Theis solution to be only 0.16 feet, or about 2 inches. Furthermore, the Theis solution assumes that the aquifer has no recharge; however, because there is significant recharge from the Walker River, ditches and canals, and normal irrigation, the drawdown estimated using Theis will be more than actual drawdown.¹ The State Engineer finds

² Nevada Division of Water Resources' Water Rights Database, April 19, 2016, official records in the Office of the State Engineer.

that the expected drawdown is negligible and approval of Application 82479 will not conflict with existing rights or protectable interests in domestic wells.

III.

The Protestant claims that changes made to the Walker River surface water rights by the Walker Basin Restoration Program will impact water levels and reduce aquifer recharge in the Smith Valley hydrographic area. Application 82479 is seeking a new appropriation of groundwater and is not part of any surface water acquisition program. Since impacts have been found to be negligible, any effect that approval of Application 82479 has will be negligible regardless as to whether or not the Walker Basin Restoration Program is causing any impacts. The State Engineer finds that it is unnecessary to examine impacts by unrelated water right changes since Application 82479 will not contribute to any such impacts asserted by the Protestant.

IV.

The Protestant asserts that the basin, and the specific area of interest, is over-appropriated. The committed groundwater resource is approximately 54,753 afa. Of these, about 53,000 afa is for irrigation and of that about 34,000 afa is supplemental to surface water. The perennial yield of the Smith Valley Hydrographic Basin is 17,000 acre-feet (af), but because there is significant recharge from the Walker River, ditches and canals, and normal irrigation, the system yield, being 62,000 af, is considered.³

The State Engineer issued Order No. 1126 on February 4, 1997, limiting groundwater appropriations within the designated portion of the Smith Valley Hydrographic Basin to those applications that seek to appropriate 1,800 gallons per day or less for commercial, stockwater or industrial purposes where the property is zoned for such purposes and those applications for environmental permits filed pursuant to NRS § 533.437.⁴ The State Engineer issued Order No.

³ Nevada Division of Water Resources' Water Rights Database, Hydrographic Basin Summary, Smith Valley Hydrographic Basin (107), April 19, 2016, official records in the Office of the State Engineer, available at <http://water.nv.gov/data/underground/>.

⁴ State Engineer's Order No. 1126, dated February 4, 1997, official records in the Office of the State Engineer.

1177 on July 8, 2005, extending the designated area to the entire Smith Valley Hydrographic Basin and, in part, extending State Engineer's Order No. 1126 to this designated area.⁵

The State Engineer issued Order No. 1271 on December 29, 2015, ordering that any application to appropriate groundwater within the Smith Valley Hydrographic Basin to be denied except for those applications filed for environmental purposes pursuant to NRS § 533.437, temporary permits pursuant to NRS §§ 533.436 or 533.504, and those applications filed for diversion rate only or non-consumptive purposes.⁶

In this instance, the filing of this application predates the issuance of Order 1271. Additionally, one of the reasons set forth in the order for limitation of new appropriations is the finding that there are declining groundwater levels in many areas of the Smith Valley Hydrographic Basin.⁷ As discussed in Finding of Fact II above, drawdown, even right at the point of diversion for a twenty year period, was negligible. The State Engineer finds that the intent of State Engineer's Order No. 1271 is to protect the existing rights, the protectable interests in domestic wells, and the health of the groundwater basin; therefore, the negligible effect of approval of 2 afa will not exasperate conditions in the basin. The State Engineer finds that in considering system yield of the basin, there is sufficient water available for an appropriation of 2 afa.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:⁹

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

⁵ State Engineer's Order No. 1177, dated July 8, 2005, official records in the Office of the State Engineer.

⁶ State Engineer's Order No. 1271, dated December 29, 2015, official records in the Office of the State Engineer.

⁷ *Id.*

⁸ NRS Chapters 533 and 534.

⁹ NRS § 533.370(2).

- C. the proposed use or change conflicts with protectable 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.

Having found that the potential drawdown resulting from pumping up to 2 afa from the point of diversion is negligible, even in light of asserted impacts by other causes, the State Engineer concludes that granting the application will not conflict with existing rights or protectable interests in existing domestic wells as set forth in NRS § 533.024 nor threaten to prove detrimental to the public interest.

IV.

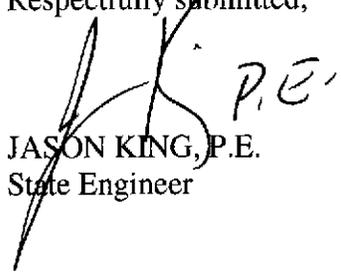
In consideration of the system yield and minimal impact to the water table by permitting the withdrawal of an additional 2 afa from the groundwater basin, the State Engineer concludes that there is water available for appropriation.

RULING

The protest to Application 82479 is overruled, and the Application is hereby granted subject to:

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

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 19th day of
May, 2016.