

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

IN THE MATTER OF APPLICATIONS 83159)
AND 83160 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE PINE VALLEY)
HYDROGRAPHIC BASIN (53), EUREKA)
COUNTY, NEVADA.)

RULING
#6355

GENERAL

I.

Application 83159 was filed on October 11, 2013, by Jeffrey A. Lynn and Laura M. Dorris to appropriate 1.0 cubic foot per second (cfs) of groundwater for irrigation purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T.28N., R.52E., M.D.B.&M. The proposed place of use is described as being located within the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 7, T.28N., R.52E., M.D.B.&M.¹

II.

Application 83160 was filed on October 11, 2013, by Jeff Lynn to appropriate 1.0 cfs of groundwater for irrigation purposes. The proposed point of diversion is described the same as that under Application 83159. The proposed place of use is described as being located within the N $\frac{1}{2}$ S $\frac{1}{2}$ of Section 7, T.28N., R.52E., M.D.B.&M.²

III.

Applications 83159 and 83160 were timely protested by Eureka County on various grounds including that there may be no unappropriated groundwater at the proposed source, the proposed use may conflict with or impair existing rights and threaten to prove detrimental to the public interest and there are numerous undetermined claims to vested rights of water in Pine Valley. Second, the proposed points of diversion are located close to Pine Creek, tributary to the Humboldt River, and pumping from this well could conflict with existing decreed surface water rights under the Humboldt River Decree. Third, the works necessary to achieve beneficial use of the subject applications were estimated at \$10,000 for each application; however, the Protestant asserts that the Applicant does not appear to fully appreciate the cost to develop the proposed system. Eureka County questions whether these applications were filed for speculative purposes,

¹ File No. 83159, official records in the Office of the State Engineer.

² File No. 83160, official records in the Office of the State Engineer.

and it questions the financial ability of the Applicant to put the water to beneficial use. Finally, the Eureka County Code requires the use of a peer-reviewed science in the assessment of impacts related to water resource development. Without this, it is Eureka County's position that the proposed use would conflict with or impair existing rights.^{1,2}

IV.

Applications 83159 and 83160 were timely protested by Carl Slagowski on the grounds that granting the applications will conflict with his pre-existing water rights including claims of pre-statutory vested water rights, certificated rights and a domestic well. Second, the applications are improper because the supporting map is in error in that it does not match the description in the applications and the stated cost to put the water to beneficial use for irrigation is unreasonably low. Finally, the recent application by Barrick for all remaining groundwater in Pine Valley, filed prior to these applications, clouds the availability of water for these applications.^{1,2}

V.

The Applicant timely filed an Answer to the protests pursuant to NAC § 533.140, which is discussed herein.^{1,2}

FINDINGS OF FACT

I.

Nevada Revised Statute § 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 in the case of Applications 83159 and 83160, 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.

These applications were filed for new appropriations in Pine Valley. The proposed point of diversion listed under Applications 83159 and 83160 is the same and the proposed point of diversion is located approximately 2,000 feet from Pine Creek. Pine Creek has existing senior decreed rights, and is tributary to the Humboldt River, a fully decreed surface water source.³ Pumping from these wells can induce recharge from Pine Creek in excess of naturally occurring

³ *In the Matter of the Determination of the Relative Rights of the Waters of the Humboldt River Stream System and Tributaries*, Case No. 2804, Sixth Judicial District Court of the State of Nevada, In and For the County of Humboldt (October 20, 1931).

stream infiltration by increasing the hydraulic gradient between the stream channel and the well. This occurs regardless of when the stream is flowing, because groundwater storage depletion caused by pumping in one season will be replaced by enhanced recharge in the following season. The amount of water captured from the stream can be estimated using a Glover's analysis.⁴ For this analysis, transmissivity was estimated to be within the range of 1,000 - 2,000 ft²/day and the storage coefficient was estimated to be 0.15 for the proposed point of diversion.¹ The State Engineer finds that the Glover's analysis demonstrates that over a period of five years, reduction in stream flow caused by pumping from the proposed wells under Applications 83159 and 83160 would be over 50% of the volume pumped.^{1,2}

Although the Applicant asserts in his Answer that he would be willing to install a 100' seal,⁵ the State Engineer finds that in the case of these applications, the practice of requiring a 100' foot seal could delay the capture of surface flows, but that the delay would not significantly change the estimate of stream flow reduction over a five-year period.

CONCLUSIONS OF LAW

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 a permit under 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 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.

⁴ Glover, R. E., and C.G. Balmer, 1954, *River depletion resulting from pumping a well near a river*. Am. Geophysical Union Trans. v. 35; no. 3: 468-470; and see also, Jenkins, C.T., 1968, *Techniques of water-resources investigations of the United State Geological Survey* (Computation of rate and volume of stream depletion by wells). United States Geological Survey. Book 4, ch. D1; p. 17.

⁵ See generally Nevada Administrative Code (NAC) § 534.390.

⁶ NRS Chapters 533 and 534.

⁷ NRS § 533.370(2).

III.

Glover's analysis demonstrates that over a period of five years, Applications 83159 and 83160 would capture over 50% of the volume pumped from the surface water source, which has existing senior decreed rights and is tributary to the Humboldt River. Although a seal has been proposed, which could delay the capture of the surface water source, this condition would not significantly change the estimate of stream flow reduction over a five-year period; therefore, the State Engineer concludes that Applications 83159 and 83160 would conflict with existing rights.

RULING

The protests to Applications 83159 and 83160 are upheld in part and Applications 83159 and 83160 are hereby denied on the grounds that approval of the applications would conflict with existing rights and that they would threaten to prove detrimental to the public interest. No ruling is made on the merits of the remaining protest grounds.

Respectfully submitted,

 P.E.
JASON KING, P.E.
State Engineer

Dated this 11th day of
August, 2016.