

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

IN THE MATTER OF APPLICATIONS 85311,)
85312 AND 85313 FILED TO CHANGE THE)
POINT OF DIVERSION, PLACE OF USE AND)
MANNER OF USE OF THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE, A PORTION)
OF WATER PREVIOUSLY APPROPRIATED)
UNDER PERMITS 77521, 77738 AND 77739,)
RESPECTIVELY, WITHIN THE IMLAY AREA)
HYDROGRAPHIC BASIN (72), PERSHING)
COUNTY, NEVADA.)

RULING
#6368

GENERAL

I.

Application 85311 was filed on July 14, 2015, by Green Goat Restoration LLC to change the point of diversion, place of use and manner of use of 0.126 cubic feet per second (cfs), not to exceed 60.0 acre-feet annually (afa), for irrigation purposes, a portion of water previously appropriated under Permit 77521. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T.34N., R.35E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T.34N., R.35E., M.D.B.&M. The proposed place of use is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ (portion), SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, portions of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ (portion), NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ (portion), NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ (portion), SW $\frac{1}{4}$ SE $\frac{1}{4}$ (portion) and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ (portion) of Section 35, all within T.34N., R.35E., M.D.B.&M., comprising a total of 520.13 acres. The existing manner and place of use are described as being for mining, milling and domestic purposes located within the S $\frac{1}{2}$ of Section 26, SE $\frac{1}{4}$ of Section 27, E $\frac{1}{2}$ of Section 34, and all of Sections 35 and 36, T.34N., R.34E., M.D.B.&M., the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 31, T.34N., R.35E., M.D.B.&M., the W $\frac{1}{2}$ of Section 1, the N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ (portion), SE $\frac{1}{4}$ NE $\frac{1}{4}$ (portion), NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2 (portion), all of

Section 37, the NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ (portion) SE $\frac{1}{4}$ NE $\frac{1}{4}$ (portion) and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ (portion), of Section 38 all within T.33N., R.34E., M.D.B.&M.¹

II.

Application 85312 was filed on July 14, 2015, by Green Goat Restoration LLC to change the point of diversion, place of use and manner of use of 0.06 cfs, not to exceed 29.14 afa, for irrigation purposes, a portion of water previously appropriated under Permit 77738. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T.34N., R.35E., M.D.B.&M. The existing point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, T.34N., R.34E., M.D.B.&M. The proposed place of use is the same as described in Application 85311. The existing manner and place of use are the same as described in Application 85311.²

III.

Application 85313 was filed on July 14, 2015, by Green Goat Restoration LLC to change the point of diversion, place of use and manner of use of 0.038 cfs, not to exceed 18.46 afa, for irrigation purposes, a portion of water previously appropriated under Permit 77739. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T.34N., R.35E., M.D.B.&M. The existing point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, T.34N., R.34E., M.D.B.&M. The proposed place of use is the same as described in Application 85311. The existing manner and place of use are the same as described in Application 85311³

FINDINGS OF FACT

I.

Applications 85311, 85312 and 85313 were filed to change existing underground water rights within the Imlay Area Hydrographic Basin. Application 85311 proposes to move 60.0 afa from an existing wellsite located 11,100 feet west of the Humboldt River, with Applications 85312 and 85313 proposing to move 29.14 afa and 18.46 afa, respectively, from another well site located 23,100 feet west of the Humboldt River. The State Engineer finds that the three applications are

¹ File No. 85311, official records in the Office of the State Engineer.

² File No. 85312, official records in the Office of the State Engineer.

³ File No. 85313, official records in the Office of the State Engineer.

supplemental to one another. Approval of all three applications would transfer a total combined duty of 60.0 afa into a single existing well located 9,600 feet east of the Humboldt River.

II.

The subject applications are for changes of water previously appropriated under Permits 77521, 77738 and 77739. These existing permits were conditioned with the statement that:

The manner of use of water under this permit is by its nature a temporary use and any application to change the manner of use granted under this permit will be subject to additional determination and evaluation with respect to the permanent effects on existing rights and resources within the groundwater basin.

III.

The Humboldt River is a fully committed water source by numerous decreed water rights, primarily for agricultural purposes.⁴ Pumping from the proposed point of diversion, can induce recharge from the Humboldt River in excess of naturally occurring stream infiltration by increasing the hydraulic gradient between the river channel and the well. A Glover's analysis was used to quantify the relative impact of change Applications 85311, 85312 and 85313 on existing Humboldt River senior decreed water rights.^{5,6} For this analysis transmissivity was assigned a value of 2,300 ft²/day, with a storage coefficient of 0.15. The State Engineer finds that after a period of five years, reduction in Humboldt River flow caused by pumping under change Applications 85311, 85312 and 85313 would be 20% of the pumped rate.

The applicant submitted a written statement in support of the Applications, which stated that the proposed change of 60.0 afa can be considered a small amount that seemingly would not cause a perceptible impact on the river if approved.^{1,2,3} In considering the results of the Glover's analysis set forth above, the State Engineer cannot agree with the Applicant's position that there would be no impact to the river.

⁴ See generally, Findings of Fact Conclusions of Law and Decree entered in *In the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the Waters of the Humboldt River Stream System and Its Tributaries*, Case No. 2804, Sixth Judicial Court of the State of Nevada, In and For the County of Humboldt (October 20, 1931).

⁵ See Memorandum to file dated July 5, 2016, File No. 85311, official records of the Office of the State Engineer.

⁶ 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.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:⁸

- 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.

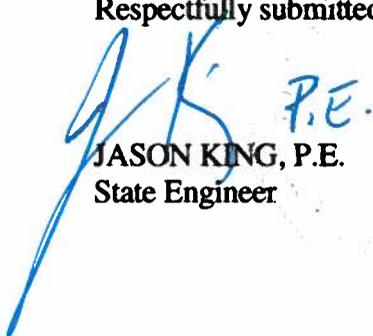
III.

Glover's analysis demonstrates that after five years, change Applications 85311, 85312 and 85313 would capture 20% of the pumped rate from the Humboldt River; therefore, the State Engineer concludes that the approval of change Applications 85311, 85312 and 85313 would conflict with existing rights and threaten to prove detrimental to the public interest.

RULING

Applications 85311, 85312 and 85313 are hereby denied on the grounds that approval would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 26th day of
September, 2016.

⁷ NRS Chapters 533 and 534.

⁸ NRS 533.370(2).