

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

IN THE MATTER OF APPLICATIONS)
67729 AND 67730 FILED TO)
CHANGE THE POINTS OF DIVERSION)
AND PLACES OF USE OF WATER)
PREVIOUSLY APPROPRIATED FROM)
AN UNDERGROUND SOURCE WITHIN)
THE VIRGIN RIVER VALLEY)
HYDROGRAPHIC BASIN (222),)
LINCOLN COUNTY, NEVADA.)

RULING

#5144

GENERAL

I.

Application 67729 was filed on July 2, 2001, by the Virgin Valley Water District (VVWD) to change the point of diversion and place of use of 2.0 cubic feet per second (cfs) of underground water in the Virgin River Valley Hydrographic Basin previously appropriated under Permit 49680.¹ The water is to be used for municipal and domestic purposes within the service area of the VVWD, more specifically described as all of Township 13 S., Ranges 68, 69, 70, 71 E.; Township 14 S., Range 68 E., excepting Sections 7 and 18, Ranges 69, 70, 71 E.; Township 15 S., Range 69 E., excepting Sections 5 through 8, 18, 19, 25 through 36, Range 70E., excepting Sections 25 through 36, Range 71E., excepting Sections 27 through 34, M.D.B.&M., Clark County, Nevada, all of Section 32, T.40N., R.16W., and Section 5, T.39N., R.16W., G.S.R.B.&M., Mojave County, Arizona.² The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T.12S., R.71E., M.D.B.&M., Lincoln County, Nevada. The existing point of diversion is located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T.13S., R.70E., M.D.B.&M., Clark County, Nevada.

¹ Permit 49680 was issued on June 1, 1988, for 2.0 cfs, not to exceed 471.81 million gallons annually.

² File No. 67729, official records in the Office of the State Engineer.

II.

Application 67730 was filed on July 2, 2001, by the VVWD to change the point of diversion and place of use of 2.0 cfs of underground water in the Virgin River Valley Hydrographic Basin previously appropriated under Permit 52017.³ The water is to be used for municipal and domestic purposes within the service area of the VVWD.⁴ The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 16, T.12S., R.71E., M.D.B.&M., Lincoln County, Nevada. The existing point of diversion is located in the NE¼ SE¼ of Section 30, T.13S., R.71E., M.D.B.&M., Clark County, Nevada.

III.

By letter dated January 15, 2002, the State Engineer's office informed the Lincoln and Clark County Commissioners under the provision of NRS § 533.363 of the filing of the applications.

By letter dated March 4, 2002, the Lincoln County Board of Commissioners responded to the State Engineer indicating as follows:²

The proposed changes would move existing water rights from a location south of the Virgin River approximately seven and a half miles north and three and a half miles into Lincoln County. The Virgin Valley Water District has a statutory service area which includes only a portion of Clark County.

Previously, the Virgin Valley Water District made application for numerous groundwater rights in the Lincoln County portion of the Virgin Valley groundwater basin. Pending VVWD applications in Lincoln County total over 100,000 acre-feet. All have been protested and none have been acted upon. The Lincoln County Commission views the subject applications as a ploy to have the State Engineer approve groundwater appropriations within Lincoln County by utilizing water resources that were originally permitted for points of

³ Permit 52017 was issued on June 14, 1989, for 2.0 cfs, not to exceed 471.81 million gallons annually, and has an annual duty of water combined with other permits.

⁴ File No. 67730, official records in the Office of the State Engineer.

diversion on the opposite side of the Virgin River in Clark County. It seems clear that the intent of the original applications and the review and approval by the State Engineer's office under the base permits was done with a completely different set of facts and conditions.

The Lincoln County Commission, in July of 2000, approved a County Water Plan and its adoption as a part of the Lincoln County Master Plan. This water plan contemplates Lincoln County providing water service to development in the southeastern portion of our boundaries in response to the privatization action of new lands by the Lincoln County Land Act. Lincoln County and Vidler Water Company have jointly filed for water appropriations in the Virgin Valley groundwater basin and the adjacent Tule Desert to support development anticipated through the Lincoln County Land Act and the proposed Cogentrix Power Plant.

It does not appear that the Virgin Valley Water District is requesting these changes as a part of any overall plan or program. We are aware that Virgin Valley Water District has in the neighborhood of twelve thousand (12,000) acre feet of existing water rights and is using only a portion of them at this time. The locations where development would occur requiring the levels of water application which have been made by the Virgin Valley Water District, are totally unclear. The Virgin Valley Water District's service area is in a limited portion of Clark County, and under State Statute VVWD is not permitted to serve in Lincoln County. The primary area of growth in this portion of Nevada appears to be through the Lincoln County Land Act, in Lincoln County, not Clark County. Without any plan or demonstrated need for serving the water that has been applied for under pending applications, the motives and plans of the Virgin Valley Water District are unclear, to say the least.

It would appear that the larger question of the Virgin Valley Water District's extensive applications to appropriate within Lincoln County should be addressed prior to taking action on these change applications. The subject applications are actually north of one of the Lincoln County/Vidler applications which was filed specifically to provide a point of diversion in the immediate area of the Lincoln County Land Act.

The potential impact of the Virgin Valley Water District's applications and attempts to appropriate water in Lincoln County appear speculative and clearly reflect the need for a cooperative review and coordination of water service in this portion of Lincoln County.

The Lincoln County Commission feels that these applications are inappropriate and should be denied. The appropriation of water within Lincoln County's service area by the Virgin Valley Water District without a mutually approved overall water plan is an irresponsible request to place before the State Engineer. These applications seek to pump water from locations within an area designated for development by an entity who is by law precluded from serving water in this area. This clearly violates the public interest, and will make it very difficult for future water service to the Lincoln County Land Act area. Further, the changes in the points of diversion requested by the Virgin Valley Water District and the inherent priority associated with the base permits, will adversely affect Lincoln County's existing water filing in this immediate area.

We urge you to deny these applications and request the Virgin Valley Water District to work jointly with Lincoln County and Vidler Water Company in cooperatively planning for future water service in this portion of Lincoln County.

IV.

Applications 67729 and 67730 were timely protested by Vidler Water Company ("Vidler") on the following grounds.^{1, 2}

1. Protestant is a partner with Lincoln County in water applications for municipal water service in Lincoln County with a place of use that includes the area where wells under these applications are proposed.
2. Applicant proposes to pump water from Lincoln County from locations which are included in the Lincoln County Land Act. However, applicant is not permitted to serve water in Lincoln County.
3. Applicant is attempting to circumvent the issues and concerns of Protestant as well as Lincoln County and its residents by applying to transfer

existing permitted rights from Clark County to Lincoln County when the Applicant already holds over 100,000 acre-feet of pending Applications to Appropriate underground water in Lincoln County.

4. The Applicant has provided no water service plan, water master plan, or other technical bases to demonstrate the need for wells within the place of use of pending applications held by the Protestant and Lincoln County.
5. For these and numerous reasons, Protestant feels that this application should be denied.

V.

Applications 67729 and 67730 were also timely protested by Lincoln County on the grounds that:^{1, 2}

Lincoln County Commissioners adopted a water plan as an element to its Master Plan in July 2000. These applications do not comply with this element of the County Master Plan.

1. Applicant's proposed points of diversion are in Lincoln County approxiately [sic] three and one half miles outside Applicant's service area.

2. Applicant's proposed points of diversion are within the area of the Lincoln County Land Act, but the Applicant is precluded by law from service areas in Lincoln County.

3. Protestant Lincoln County is a co-applicant on municipal applications, which propose to provide water to serve the Lincoln County Land Act areas as is provided for in our Master Plan.

4. Protestant Lincoln County has an approved Water Plan, which these applications conflict with.

5. These applications if approved would disrupt and impede Protestant's ability to appropriate and provide water for this development in the Lincoln County Land Act areas as delineated in the Lincoln County Water Planning element of the Master Plan.

6. The Applicant has approximately 100,000 acre feet of protested underground water applications in the Lincoln County portion if [sic] the Virgin River Groundwater Basin that have not been acted upon by the

State Engineer.

7. Applications 67729 and 67730 are an attempt to circumvent the spirit and intent of NRS and the Lincoln County Master Plan by requesting the movement of existing permits over seven miles across the Virgin River, out of the Applicant's lawful service area, and more than three miles into Lincoln County which is not in the lawful service area.

8. Applicant has not shown that these applications are compatible with the approved Lincoln County Water Planning element of the Master Plan.

9. Applicant has not demonstrated through an approved water plan or other technical means that these applications are reasonable or necessary. The applications are not part of an approved amendment of Lincoln County's Master Plan, nothing has been submitted to Protestant asking to amend their water plan by applicant, it would seem prudent and neighborly for applicant to consult, cooperate and coordinate with Lincoln County.

10. The impact of approval of these applications on the area of the Lincoln County Land Act would be significant. The Applicant should not be permitted to use the State Engineer's office as a substitute for cooperation and coordination with Lincoln County Commissioners and other applicants and permittees in the Lincoln County portion of the Virgin Valley Groundwater Basin.

11. Granting of the subject application will exacerbate the adverse impact of the Protestants concerns between basin nos. 221 and 222. Protestant and County Residents have water filings and resident's have permits in these basins which would be adversely impacted by the applicant's cumulative filings.

12. The applicant does not own or control or own the proposed place of use.

13. Granting the subject application, particularly when considered with other applications filed concurrently by the Applicants, will adversely impact existing springs and seeps that provide a source of water for wildlife (including some species listed under the Endangered Species Act).

14. The source of resource the applicant seeks to

appropriate is regional in character and the granting of the subject application, when considered with the other 100,000 acre feet of applications filed by applicant will adversely impact existing rights, including but not limited to the protestant.

15. Upon information and belief, the granting of subject application, especially considered with the other 100,000 acre feet of applications will adversely impact the quality of water, appropriated by Lincoln County and it's residents.

16. The proposed point of diversion is near Mesquite Landfill sites, it would not appear to be an appropriate point to draw water for a municipal service area.

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.365 provides that the State Engineer shall consider a protest timely filed, but that it is within his discretion whether or not to hold an administrative hearing as to any particular water right application. The State Engineer finds there is sufficient information available to review these specific applications and that an administrative hearing in this instance is not necessary.

II.

The legislation establishing the VVWD⁵ provides that the district may acquire water and water rights within or outside the district, construct works for the importation of water, store water within or outside the district, sell water for use outside the district upon a finding by the board that there is a surplus of water above the amount required to serve customers within the service area, and supplement water resources of the district by importation and use of water from other sources.

The State Engineer finds both Lincoln County and the VVWD are political subdivisions of the State of Nevada. The State Engineer finds nothing in the law, which indicates that the VVWD is not

⁵ Chapter 100, Statutes of Nevada 1993.

permitted to go outside its statutory service area to establish a point of diversion for a groundwater resource, but rather, Nevada law indicates just the opposite. The State Engineer finds the law, which created the VVWD, provides the district with the authority to import water for use in the service area. The State Engineer finds nothing in the records of the Office of the State Engineer or the law which indicates that Lincoln County is first in line for any water to be appropriated from that county or that Lincoln County can "lock up" the water found within its boundaries thereby preventing others from pursuing their water right needs or applications. The State Engineer finds that he is not aware of any Nevada law that prioritizes Lincoln County's needs or desires over those of the VVWD.

III.

Protestants argue that the State Engineer should act upon the approximately 100,000 acre-feet of water right applications for the appropriation of new ground water in the Virgin River Valley Hydrographic Basin filed by the VVWD before acting on these change applications. Protestants argue the subject applications are a ploy, an attempt to circumvent Protestants' issues and concerns, and an attempt to circumvent the spirit and intent of the Nevada Water Law.

State Engineers have previously acted and continue to act on change applications in groundwater basins before acting on new appropriations with junior priorities. The water rights that form the bases for these change applications are senior in priority to applications pending for new appropriations.

Two examples of this are provided. In the Lower Meadow Valley Wash Hydrographic Basin (205), the State Engineer recently held hearings on various change applications⁶ before acting on

⁶ In the matter of change Applications 66334 - 66339, inclusive, 66976 - 66990, inclusive, and 66992 - 66999, inclusive, filed to appropriate the underground waters within Lower Meadow Valley Wash Hydrographic Basin (205), Lincoln County, Nevada.

pending applications for new appropriations of water.⁷ In the Virgin River Valley Hydrographic Basin, State Engineers have acted on change applications⁸ while applications for new appropriations are pending.⁹

The State Engineer finds the Protestants cited to no statutory provision of Nevada Water Law that the Applicant "attempts to circumvent." The State Engineer finds there is no reason not to act on change applications of existing water rights just because applications are pending for new appropriations of water from the same groundwater basin. The State Engineer finds change applications have been acted on many times prior to consideration of the requests for new appropriations of groundwater with junior priorities from the particular groundwater basin. The State Engineer finds the priority date of the permits that form the bases for the change applications at issue here are senior to any of the pending applications for the appropriation of new water from the groundwater basin filed by either the VVWD or the Protestants. The State Engineer finds he is acting on these change applications and is not acting on the other pending applications to appropriate groundwater within the basin; therefore, Protestants' issues as to the impact to existing rights, impacts to springs and seeps or water quality are not relevant.

IV.

Protestants allege that these applications conflict with the Lincoln County Master Plan and Water Plan. They argue that the Lincoln County Water Plan approved in July 2000 contemplates Lincoln County and Vidler providing water service to proposed developments in the southeastern portion of the County, that is,

⁷ Applications 63379, 63380, 63381, 63810.

⁸ See, Applications 56244, 56981, 61594, 61595, 61975 and 63879, which changed points of diversion and/or places of use of water rights previously appropriated from the groundwater basin.

⁹ See, Applications 54078-54092, 54175, 54681, 55282, just to list a few.

lands to be exchanged pursuant to the Lincoln County Land Act and land to be exchanged for the proposed Cogentrix Power Plant.¹⁰ Further, that Lincoln County and Vidler are partners in water applications for municipal service with the place of use that includes the area where the wells are proposed to be located, and that the applicant is not authorized to serve water in Lincoln County. Lincoln County and Vidler have jointly filed for underground water appropriations in the Virgin River Valley Hydrographic Basin and adjacent Tule Desert Hydrographic Basin to support development anticipated through the Lincoln County Land Act and the proposed Cogentrix Power Plant.

The Lincoln County Water Plan indicates that the County itself hopes to export water out of the Lincoln County as a method of generating revenue.¹¹ For example,

Lincoln County could become a water wholesaler by developing infrastructure to transport water across the county to locations within the county or to locations outside of county boundaries. One possible scenario would be to move water from Lincoln County to the Mesquite area. The County could also import water from adjacent counties, use the water internally or export the water outside of its boundaries.¹²

The State Engineer finds there is nothing in these applications indicating any intent on the part of the VVWD to provide water service to the areas which the protestants are concerned about; however, as previously noted, the act which created the VVWD provides for the ability of the VVWD to serve water outside of its service area upon certain conditions.

The State Engineer finds in Southern Nevada many applicants are vying for the right to use water from the alluvial and

¹⁰ The State Engineer notes that hearings were conducted in May 2002 on Lincoln County/Vidler Applications 64692, 64693 and 66932, which request significant quantities of water from the Tule Desert Hydrographic Basin to serve the Cogentrix Power Plant and the Lincoln County Land Act areas.

¹¹ A Water Plan for Lincoln County, Final Plan March 20, 2001, pp. 2, 38, official records in the Office of the State Engineer.

¹² Id. at 38.

carbonate-rock aquifers system for various uses. Some entities, such as the VVWD, the Moapa Valley Water District and the Las Vegas Valley Water District are planning for the future of existing communities, some of which are the fastest growing communities of their size in the nation. The State Engineer understands that Lincoln County is trying to expand its private land base through the Lincoln County Land Act in order to bolster its tax base, but also understands that Lincoln County in partnership with Vidler apparently looks at the water resources within Lincoln County as a means to provide additional income.

The State Engineer finds nothing in Nevada Water Law that prevents the VVWD from applying for points of diversion in a place that presently is not private land, and that might under some future water right permit be served by another entity.¹³

The State Engineer finds that Lincoln County and Vidler appear to want to prohibit a statutorily created water purveyor from replacing wells in a groundwater basin that neither Protestant currently hold any permitted water rights. The State Engineer finds these applications have as their base water rights, permits with senior priorities to the filings by Lincoln County/Vidler for new appropriations of ground water.¹⁴ The State Engineer finds that he is not aware of any Nevada law which provides the basis for which a county water plan trumps any other applicant or that special consideration to water in Lincoln County for Lincoln County was established by the creation of the master plan, water plan or the Lincoln County Land Act. The State Engineer finds that he is not aware of any Nevada law, which provides that the VVWD may not look outside its boundaries for water resources to serve its customers. The State Engineer finds there is nothing in Nevada Water Law that indicates that every

¹³ For example, Carson City applied for points of diversion in Douglas County. See, legislative history NRS § 533.363.

¹⁴ Applications 64694 and 64695 were filed on 12/11/98 in the name of Lincoln County.

other entity is constrained or restricted by another county's master plan or water plan. The State Engineer finds that Lincoln County/Vidler have also applied for significant quantities of water in this region, including Tule Desert, to serve water for development in the Lincoln County Land Act areas.

v.

Protestant alleges that it does not appear that the VVWD is requesting these changes as a part of any overall plan or program. Lincoln County indicates that the VVWD has approximately 12,000 acre-feet of existing water rights and is using only a portion of them at this time. Lincoln County argues that it is unclear just where new development is going to occur requiring the levels of water appropriation, which have been made by the VVWD. Lincoln County alleges that the primary area of growth in this portion of Nevada appears to be through the Lincoln County Land Act, in Lincoln County, not Clark County; therefore, without any plan or demonstrated need for serving the water that has been applied for under pending applications, the motives and plans of the VVWD are unclear.

In the annual Applications for Extension of Time to file the Proof of Beneficial Use of the waters appropriated under Permits 49680 and 52017, that were filed in 1999, 2000 and 2001, the VVWD indicates that the wells located at the related points of diversion have experienced catastrophic failure and can no longer deliver potable water to the municipal system, and that points of diversion adjacent to the Virgin River flood plain have experienced a degradation of water quality, no longer complying with the Safe Drinking Water Act parameters for total dissolved solids.¹⁵ Further, the applicant indicates that the municipality of Mesquite, Nevada, is the fastest growing metropolitan area under 50,000 people within the United States. In response to that

¹⁵ File Nos. 49860 and 52017, official records in the Office of the State Engineer.

growth, the VVWD has been expanding its groundwater supply by constructing wells further away from urban development and utilizing a larger part of the groundwater system.¹⁶

The State Engineer finds the service area of the VVWD is one of the fastest growing in the nation while there is little, if any, development currently in the area of the Lincoln County Land Act. The VVWD is an existing, municipal purveyor of water to an existing and growing population. The State Engineer finds Lincoln County's assertion that these change applications do not appear to be part of an overall plan is without much credence. Municipal purveyors attempt to predict where growth will go and at what rate and plan accordingly. The State Engineer finds that while the VVWD has not utilized the full extent of its water rights to date that does not preclude long range planning and the moving of wells to areas with better water quality. The State Engineer finds he is not considering the proposed 100,000 acre-feet of new appropriations in the context of these applications; therefore he need not address whether the VVWD can demonstrate a beneficial use for that quantity of water at this time or where development is going to occur that requires 100,000 acre-feet of water.

VI.

Vidler argues that the Applicant has provided no water service plan, water master plan or technical bases to demonstrate the need for wells within the place of use of pending applications held by Lincoln County/Vidler. Lincoln County argues a proposed point of diversion is near the Mesquite Landfill and this location would not appear to be an appropriate point to draw water for a municipal service area.

In April 2002 the VVWD published its Integrated Water Resource Plan.¹⁷

¹⁶ Ibid.

¹⁷ Exhibit No. 48, In the Matter of Protested Applications 64692, 64693 and 66932, filed by Lincoln County and Vidler Water, public administrative hearing before the State Engineer, May 14-16, 2002.

The State Engineer finds an applicant is not required by Nevada Water Law to produce a water service plan, water master plan or technical basis for where it chooses to file a water right application. The State Engineer finds the VVWD is a purveyor of municipal water; therefore, the State Engineer must assume water quality matters came into consideration as to the locations requested as points of diversion. The State Engineer finds he is not required to second guess a public water district's choice of location of proposed points of diversion.

VII.

One of the issues raised is that under the change applications, the points of diversion would be moved from a location south of the Virgin River to points approximately seven and half miles north and three and a half miles into Lincoln County. Applications 67729 and 67730 both propose to change points of diversion of underground water previously appropriated within the Virgin River Valley Hydrographic Basin to points of diversion within the same hydrographic basin.

When the State Engineer addresses the issue of a basin's groundwater resource, the basin is evaluated as a whole, which includes an evaluation of the basin's recharge and discharge components. Sources of groundwater recharge, which contribute to the amount of ground water that is available for appropriation, consist of precipitation, subsurface inflow of ground water from adjacent basins, infiltration of water from surface water sources. Under developed conditions, ground water is discharged by subsurface outflow, evapotranspiration, and well pumpage.

The perennial yield of a groundwater reservoir may be defined as the maximum amount of ground water that can be salvaged each year over the long term without depleting the groundwater reservoir. Perennial yield is ultimately limited to the maximum amount of natural recharge that can be salvaged for

beneficial use. If the perennial yield is continually exceeded groundwater levels will decline.¹⁸

The argument being raised here has been previously addressed in State Engineer's Ruling No. 5079.¹⁹ In that ruling, an argument was raised by a protestant that the State Engineer should not consider recharge to the whole groundwater basin in the determination of the quantity of water available under the change applications, but rather should consider only that recharge available in the subbasin where the groundwater filings had their points of diversion, and that the surface-water and ground-water resources should be considered together in terms of priority of appropriation. In Ruling No. 5079, the State Engineer found that in Nevada, the groundwater resources have been managed on a perennial yield basis of the entire hydrographic basin. Each groundwater basin in Nevada was defined and a perennial yield figure calculated based on a recharge/discharge relationship, which keeps the basin in balance. The water that is not calculated as contributing to recharge of the groundwater system is accounted for in the amounts available for appropriation from surface-water sources. There is no logical reason to deviate from the management scheme now in place and accept the proposal that the groundwater basin should be managed drainage by drainage. Therefore, it does not matter in terms of total water available from the groundwater basin that it comes from the other side of the river as it is counted as committed resources of the basin.

VIII.

Lincoln County wants the State Engineer to force the VVWD to cooperate and coordinate with Lincoln County and Vidler for water service in this portion of Lincoln County. It is not the mandate of the State Engineer to advise the VVWD with whom it should or

¹⁸ State Engineer's Office, WATER FOR NEVADA, STATE OF NEVADA WATER PLANNING REPORT NO. 3, p. 13, Oct. 1971.

¹⁹ State Engineer's Ruling No. 5079, dated September 27, 2001, official records in the Office of the State Engineer.

should not cooperate and coordinate, or as to where it will file to appropriate water or to whom it will serve water.

IX.

Lincoln County alleges that since these applications seek to pump water from locations within an area designated for development by an applicant who is by law precluded from serving water in that area, the public interest is clearly violated and it will make it very difficult for future water service to the Lincoln County Land Act area.

In Nevada, people hold water rights that allow for the appropriation of ground water within the service area of a water district. For example, in the Las Vegas area, there are many permitted water rights held by private citizens that allow for the appropriation of ground water within Clark County, which is the service area of the Las Vegas Valley Water District. The rights being sought to be changed under these applications are existing water rights that already allow for the appropriation of ground water from this hydrographic basin.

The State Engineer further finds there is nothing in Nevada Water Law, which indicates that a separate entity is constrained or restricted by another county's master plan or water plan. The State Engineer finds the statute, which created the VVWD specifically, provides for the district going outside its service area for water resources. The State Engineer finds Nevada law does not indicate that Lincoln County's desire to serve water in a certain area precludes others with senior water rights in the groundwater basin from appropriating in that area, particularly since Lincoln County/Vidler do not presently hold any permitted water rights in that area.

X.

Lincoln County alleges that the applicant does not own or control the proposed place of use. The State Engineer finds this protest issue borders on meritless as no water district purveyor

owns all of the land within the district boundaries to which it provides water service. Further, the VVWD indicated in the 2001 Application for Extension of Time that it has applied for rights-of-way and easements with the Bureau of Land Management for numerous well locations within the Lower Virgin River Basin, and that it anticipates acquiring the necessary rights-of-way to successfully relocate the wells.²⁰

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²¹

II.

The State Engineer is prohibited by law from granting a permit under change applications to appropriate the public waters where:²²

- A. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in 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.

Nevada Revised Statute § 533.363 provides that county boards may make a recommendation to the State Engineer on a course of action when a permit is requested for use of water in a county other than the county in which it is appropriated or is to be diverted from or used in a different county than that in which it is currently being diverted or used; however, the recommendation is not binding on the State Engineer. The State Engineer concludes that the recommendation of the Lincoln County Board of Commissioners is not binding on him.

²⁰ File Nos. 52017, 49680, official records in the Office of the State Engineer.

²¹ NRS chapters 533 and 534.

IV.

Nevada Revised Statute § 533.025 provides that the water resources of the state belongs to the public, and that NRS § 533.030 provides for the appropriation of that public resource. The State Engineer concludes the water resources of Nevada belong to the public and not to any specific entity, and can be appropriated by any qualified person.

V.

The State Engineer concludes Nevada law does not preclude the VVWD from going outside its statutory service area or Clark County to locate water resources to supply the customers of its service area. The State Engineer concludes that the water within the geographic boundaries of Lincoln County does not belong to Lincoln County, but rather NRS § 534.025 provides that the underground water of the state belongs to the public and is subject to appropriation for beneficial uses. The State Engineer concludes nothing in Nevada law provides that Lincoln County's Master Plan or Water Plan prevents others from pursuing their water right needs, applications or the appropriation of water in Lincoln County. The State Engineer concludes that nothing in Nevada law places Lincoln County's desires to use the water resources of Lincoln County for revenue generation on a place of use that is not yet private land as having a higher value than the VVWD's needs to plan for customer service.

VI.

The State Engineer concludes change applications for water right permits that have priority dates senior to applications pending for new appropriations can be acted on prior to the request for new appropriations of water from the groundwater basin.

²² NRS § 533.370(3).

VII.

The State Engineer concludes that Nevada Water Law does not require a water service plan, water master plan or technical basis to demonstrate the need for wells within the place of use of other pending applications.

VIII.

The State Engineer concludes Nevada Water Law does not require a water district purveyor to own all the land within the area it services.

IX.

The State Engineer concludes Nevada Water Law does not prevent a person from applying for a water right within an area, which some other entity hopes to provide water service to in the future.

X.

The State Engineer concludes neither the Lincoln County Master Plan or Water Plan preclude others from appropriating water in Lincoln County. The State Engineer concludes all water right filings in Lincoln County are not required to comply with the Lincoln County Water Plan.

XI.

The State Engineer concludes the VVWD does not have to show its applications are compatible with the Lincoln County Water Plan.

XII.

The State Engineer concludes the impact of the additional applications to appropriate ground water from the Virgin River Valley Hydrographic Basin are not under consideration in this ruling and have not yet been acted on by the State Engineer; therefore, they are not relevant.

XIII.

The State Engineer concludes the Protestants cited no statutory provision of Nevada Water Law that the Applicant "attempts to circumvent."

XIV.

The State Engineer concludes that the proposed changes do not conflict with existing rights; conflict with protectible interests in domestic wells as set forth in NRS § 533.024; or threaten to prove detrimental to the public interest.

RULING

The protests to Applications 67729 and 67730 are hereby overruled, and Applications 67729 and 67730 granted subject to the payment of statutory permit fees and existing rights.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer.

HR/SJT/jm

Dated this 13th day of
August, 2002.