

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

IN THE MATTER OF APPLICATIONS)
71776 AND 71942 FILED TO)
APPROPRIATE THE UNDERGROUND)
WATERS OF THE TIKAPOO VALLEY)
SOUTHERN PART HYDROGRAPHIC BASIN)
(169B), LINCOLN COUNTY, NEVADA.)

RULING

#5490

GENERAL

I.

Application 71776 was filed on October 18, 2004, by the U.S. Fish and Wildlife Service to appropriate 0.41 cubic feet per second (cfs), not to exceed 184.0 gallons per minute (gpm), of the underground water of the Tikapoo Valley Southern Part Hydrographic Basin. The proposed point of diversion is described as being an existing well located within the NW¼ SW¼ of Section 11, T.12S., R.60E., M.D.B.&M. The manner of use is proposed as a short-term project to repair a portion of Alamo Road. The proposed place of use is described as being located in portions of Sections 1, 2 and 3, T.12S., R.60E., M.D.B.&M., portions of Sections 1, 12, 24, 35 and 36, T.11S., R.60E., M.D.B.&M., portions of Sections 7, 18, 19, 30 and 31, T.11S., R.61E, M.D.B.&M. The application indicates that the period of use requested is January 2005 through June 2005 and that construction would take 3-4 months.¹

II.

Application 71942 was filed on November 22, 2004, by the U.S. Fish and Wildlife Service to appropriate 0.41 cfs, not to exceed 184.0 gpm, of the underground water of the Tikapoo Valley Southern Part Hydrographic Basin. The proposed point of diversion is described as being an existing well located within the NE¼ NE¼ of Section 36, T.11S., R.60E., M.D.B.&M. The manner of use is proposed as a short-term project to repair a portion of Alamo Road. The proposed place of use is

¹ File No. 71776, official records in the Office of the State Engineer.

described as being located in portions of Sections 2 and 3, T.12S., R.60E., M.D.B.&M., portions of Sections 1, 12, 24, 35 and 36, T.11S., R.60E., M.D.B.&M., portions of Sections 7, 18, 19, 30 and 31, T.11S., R.61E., M.D.B.&M. The application indicates that the period of use requested is January 2005 through June 2005 and that construction would take 3-4 months.²

III.

Applications 71776 and 71942 were timely protested by the Lincoln County Water District on the grounds that the applications indicate the project is to be temporary construction while the nature of the applications is permanent. The Protestant alleges that the Applicant should have requested either a temporary application or a highway construction waiver, that it is unreasonable to propose a timeline for a project without consideration of the required periods for review of new applications set forth in NRS chapter 533, that the period of review was extended with the submission of the protests, and the applications should be denied.^{1, 2}

IV.

Application 71776 was timely protested by Wayne and Ruby Lister on the grounds that the Constitution of the United States does not allow the United States to own water and they can buy any necessary water from Lincoln County/Vidler, water brokers.¹

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.371 specifically contemplates permits issued for a specified period of time. Further, NRS § 533.345 only provides for temporary changes to existing water rights and is not applicable to requests for

² File No. 71942, official records in the Office of the State Engineer.

new appropriations of water. As noted by the Protestant NRS § 533.045 provides that when the necessity for the use of water does not exist, the right to divert ceases.

The State Engineer has granted many applications for finite periods of time, such as an application for a mining operation where the mining is to be completed in a number of years.³ For example, Permit 51847 was issued on November 4, 1988, for mining, milling and domestic purposes. The permit terms indicated that the manner of use by its nature is temporary; thus, the permit was conditioned to expire upon termination of the project or January 1, 2000, whichever occurred first. The State Engineer finds permits can be issued for a finite period of time.

II.

In State Engineer's Ruling No. 5465, the State Engineer addressed the total quantity of water available to be appropriated from the Tikapoo Valley Southern Part and permitted that total quantity to the applicant as there were no other existing rights in the basin and there were no parcels indicated as being available for development. However, it will be a number of years before that applicant's project is built and pumping of the water begins. The provisions of NRS § 533.371 authorize the State Engineer to issue permits for finite periods of time in basins that are fully appropriated but are not currently being pumped. Applications 71776 and 71942 only requested the use of water from existing wells for a short-term period of time in order to complete road repairs, notably January 2005 through June 2005. The State Engineer finds the use of water under these applications is temporary, will not conflict with existing rights or threaten to prove detrimental to the public interest. The State Engineer finds that since this ruling is

³ File No. 51847, official records of the Office of the State Engineer.

issuing in June 2005, the permits will expire when the road repair project is finished or June 1, 2006, whichever occurs first.

III.

The State Engineer finds that NRS §§ 533.010 and 534.014 includes agencies of the United States as persons authorized by law to appropriate water in Nevada.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

- 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.

The State Engineer concludes the grounds of the protest filed by the Lincoln County Water District lack merit and Nevada Water Law authorizes the issuance of permits for finite periods of time.

IV.

The State Engineer concludes the United States is authorized under Nevada Water Law to appropriate water in Nevada.

⁴ NRS chapters 533 and 534.

⁵ NRS 533.370(4).

RULING

The protests to Applications 71776 and 71942 are hereby overruled and the applications granted subject to:

1. The payment of statutory permit fees;
2. Existing rights;
3. The total combined duty under Permits 71776 and 71942 is limited to 0.41 cubic feet per second and 296.83 acre-feet for the period of use;
4. The Permittee shall provide the State Engineer with a static-water level measurement from each well before pumping begins and at the cessation of pumping, and a report on the total quantity of water pumped; and
5. The permits will expire at the completion of the road repair project or June 1, 2006, whichever occurs first.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 7th day of
June, 2005.