

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

IN THE MATTER OF APPLICATIONS)
71659, 71660, 71661, 71662 AND 71663)
FILED TO APPROPRIATE THE PUBLIC)
WATERS FROM AN UNDERGROUND)
SOURCE WITHIN THE LITTLE FISH)
LAKE VALLEY HYDROGRAPHIC)
BASIN (150), NYE COUNTY, NEVADA.)

RULING
5719

GENERAL

I.

Application 71659 was filed on September 7, 2004, by Colvin & Son, LLC, to appropriate 3.0 cubic feet per second (cfs) of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 253.63 acres of land within the E $\frac{1}{2}$ SW $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 6, and the E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, all in T.11N., R.50E., M.D.B.&M. The proposed point of diversion is described as being located within NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 6.¹

II.

Application 71660 was filed on September 7, 2004, by Colvin & Son, LLC, to appropriate 4.0 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 311.83 acres of land within the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 12, and the NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 24 all in T.11N., R.49E., M.D.B.&M., and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.11N., R.50E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.11N., R.50E., M.D.B.&M.²

III.

Application 71661 was filed on September 7, 2004, by Colvin & Son, LLC, to appropriate 7.4 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 508.22 acres of land within Lots 3 and 4, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, and the W $\frac{1}{2}$ W $\frac{1}{2}$, and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14 all in T.10N., R.49E., M.D.B.&M., and the W $\frac{1}{2}$

¹ File No. 71659, official records in the Office of the State Engineer.

² File No. 71660, official records in the Office of the State Engineer.

SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, and the NW $\frac{1}{4}$, and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 35, all in T.11N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, T.11N., R.49E., M.D.B.&M.³

IV.

Application 71662 was filed on September 7, 2004, by Colvin & Son, LLC, to appropriate 3.7 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 356.57 acres of land within the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 22, and the W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$, and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 27, all in T.10N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 22.⁴

V.

Application 71663 was filed on September 7, 2004, by Colvin & Son, LLC, to appropriate 2.7 cfs of water from an underground source within the Little Fish Lake Valley Hydrographic Basin for irrigation purposes on 128.86 acres of land within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 9, and the SW $\frac{1}{4}$ NW $\frac{1}{4}$, and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 10, and the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 15, all in T.9N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 10.⁵

VI.

Applications 71659, 71660, 71661, 71662, and 71663 were protested by Jeff Kerbel. The grounds of his protest are summarized as follows:^{1, 2, 3, 4, 5}

- a. The granting of these applications will devastate his water supply that he believes is recharged by the Little Fish Lake Valley Hydrographic Basin;
- b. The amount of water requested by these applications exceeds the recharge of the Little Fish Lake Valley Hydrographic Basin;
- c. These applications request year round use in a basin that has a 75-day growing season.

VII.

Applications 71659, 71660, 71661, 71662, and 71663 were protested by David L. Murphy. The grounds of his protest are summarized as follows:^{1, 2, 3, 4, 5}

³ File No. 71661, official records in the Office of the State Engineer.

⁴ File No. 71662, official records in the Office of the State Engineer.

⁵ File No. 71663, official records in the Office of the State Engineer.

- a. The granting of these applications will injure his water supply that he feels is recharged by the Little Fish Lake Valley Hydrographic Basin;
- b. The amount of water requested by these applications will over appropriate the Little Fish Lake Valley Hydrographic Basin;
- c. These applications request year round use in a basin that has a 75-100 day growing season.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 533.365(3) 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 protested Applications 71659, 71660, 71661, 71662, and 71663, 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.

Before any diversion of water may be made from a well, the appropriator must make application to and obtain from the State Engineer, a permit to appropriate the water.⁶ An examination of the records of the Office of the State Engineer, show that only water rights owned by the applicant, Colvin & Son, LLC, are near the proposed points of diversion.⁷ These rights are for surface water only and include Permit 2560 and proof V-02859. The State Engineer finds that there are no other existing water rights at the proposed points of diversion.

III.

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 discharge that can be salvaged for beneficial use. If the perennial yield is continually exceeded, groundwater levels will decline.⁸

⁶ NRS § 534.050(3).

⁷ Nevada Division of Water Resources Water Rights Database, Special Hydrographic Abstract.

⁸ State Engineer's Office, Water for Nevada, State of Nevada Water Planning Report No. 3, p. 13, Oct. 1971.

Withdrawals of ground water in excess of the perennial yield contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increase in cost due to increased pumping lifts, land subsidence and possible reversal of groundwater gradients, which could result in significant changes in the recharge-discharge relationship. The United States Geological Survey (USGS) estimates the perennial yield of the Little Fish Lake Valley Hydrographic Basin is approximately 10,000 acre-feet.⁹ The committed groundwater resource in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Little Fish Lake Valley Hydrographic Basin is currently approximately 25 acre-feet annually.¹⁰ The State Engineer finds that there are approximately 9,975 acre-feet of groundwater in the Little Fish Lake Valley Hydrographic Basin currently available for appropriation.

IV.

The USGS prepared a water resource report on the Little Fish Lake Valley Hydrographic Basin.¹¹ Two of the protest issues, the length of growing season and estimated water flow out of the Little Fish Lake Valley Hydrographic Basin, are answered. This report, which supported the protest contention that the growing season is short, indicated that the most probable average growing season is about 75 days with a variance of as much as 40 days in any single year. The reported water flow data did not support the protests, as no surface water flows out of the Little Fish Lake Valley Hydrographic Basin into the Hot Creek Valley Hydrographic Basin were reported or measured. Groundwater in the Little Fish Lake Valley Hydrographic Basin was described as moving toward the central phreatophyte trough of the valley where most of the flow is discharged to evaporation and; a small amount of water, estimated at 200 acre-feet, moves southward beneath the alluvial divide to outflow into the headwaters of Hot Creek Valley Hydrographic Basin. The State Engineer finds that the average growing season for Little Fish Lake Valley Hydrographic Basin is 75 days, and that a minimal amount, 200 acre-feet, of groundwater from Little Fish Lake Valley Hydrographic Basin contributes to the water inventory of the Hot Creek Valley Hydrographic Basin.

⁹ Nowlin, Jon, Groundwater Quality in Nevada – A Proposed Monitoring Program, Open File Report 78-768, U.S. Geological Survey, p. 199.

¹⁰ Special Hydrologic Basin Abstract, Water rights Database, Basin 150, August 28, 2006, official records within the Office of the State Engineer.

¹¹ Rush, Eugene F. and Everett Duane E., Water-Resources Appraisal of Little Fish Lake, Hot Creek and Little Smoky Valleys, Nevada, Water Resources-Reconnaissance Series Report 38, U.S. Geological Survey, May 1966.

V.

In response to requests for additional information from this office, Chilton Engineering and Surveying Ltd. (CES) submitted a letter, dated June 22, 2006, to amend the period of use and place of use acreage for Applications 71659, 71660, 71661, 71662, and 71663. The proposed period of use was changed from January 1 through December 31 to April 15 through October 15. The proposed place of use acreage was reduced by 920.89 acres to 1,559.11 acres by excluding acreage that is currently irrigated by surface water rights under Permit 2560, Certificate 8023 or Proof V-02859 and a portion of Little Fish Lake that is not irrigatable. The specific acreage reductions are as follows: Application 71659 acreage was reduced from 360 acres to 253.63 acres; Application 71660 acreage was reduced from 480 acres to 311.83 acres; Application 71661 acreage was reduced from 880 acres to 508.22 acres; Application 71662 acreage was reduced from 440 acres to 356.57 acres; Application 71663 acreage was reduced from 320 acres to 128.86 acres. CES appears to have overlooked Upper Fish Lake in compiling the areas to exclude. CES was advised that the permitted duty would be reduced proportional to the acreage of this area unless the proposed irrigation was justified. AutoCAD measurement of the Upper Fish Lake area was determined to be 37.9 acres under Application 71662. The State Engineer finds that 37.9 acres in Upper Fish Lake, under Application 71662, needs to be added to the acreage reductions submitted by CES.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹²

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹³

- 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.

¹² NRS chapter 533 and 534.

¹³ NRS § 533.370 (5).

III.

The State Engineer concludes that there are no conflicts with existing water rights at the proposed points of diversion.

IV.

The State Engineer concludes that there is sufficient unappropriated water in the Little Fish Lake Valley Hydrographic Basin and that the approval of Applications 71659, 71660, 71661, 71662, and 71663 would not over appropriate groundwater of the Little Fish Lake Valley Hydrographic Basin.

V.

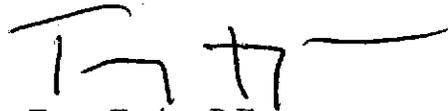
The State Engineer concludes that groundwater contribution of the Little Fish Lake Valley Hydrographic Basin to the water inventory of the Hot Creek Valley Hydrographic Basin is minimal and that the approval of Applications 71659, 71660, 71661, 71662, and 71663 would not conflict with existing rights in the Hot Creek Valley Hydrographic Basin.

RULING

The protests to Applications 71659, 71660, 71661, 71662, and 71663 are hereby overruled, and Applications 71659, 71660, 71661, 71662, and 71663 are approved subject to:

- a. permit terms,
- b. existing rights, and
- c. the payment of permit fees,
- d. period of use is limited to 120 days.

Respectfully submitted,



Tracy Taylor, P.E.
State Engineer

TT/WHR/jm

Dated this 16th day of
February, 2007.