

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

IN THE MATTER OF APPLICATION 73159 FILED)
TO CHANGE THE POINT OF DIVERSION PLACE)
OF USE AND MANNER OF USE OF THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
HERETOFORE APPROPRIATED UNDER PERMIT)
62112 WITHIN THE DAYTON VALLEY)
HYDROGRAPHIC BASIN (103), LYON COUNTY,)
NEVADA.)

RULING

#5861

GENERAL

I.

Application 73159 was filed on August 19, 2005, by Lyon County to change the point of diversion, place of use and manner of use of 0.724 cubic feet per second not to exceed 125 acre-feet annually a portion of underground water previously appropriated under Permit 62112. Application 73159 proposes to change the existing manner of use from industrial and domestic purposes to quasi-municipal purposes. The proposed place of use is described as the Lyon County/Dayton Utilities service area and is further described in Exhibit A, attached to the application, by section, township and range. The changes requested by Application 73159, if approved, would transfer the existing point of diversion from the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.15N., R.20E., M.D.B.&M. to a point that is located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T.17N., R.22E., M.D.B.&M. The existing place of use is described as being a rock quarry and processing facilities located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.15N., R.20E., M.D.B.&M.¹

FINDINGS OF FACT

I.

For management and water planning purposes, the United States Geological Survey (USGS) and the Nevada Division of Water Resources have divided the state of Nevada into 256 groundwater basins, each of which is identified by a name and number. Contained within these basins, is a subset of ground-water basins that are classified as

¹ File No. 73159, official records in the Office of the State Engineer.

designated ground-water basins.² The first ground-water basin to attain designated status was the Las Vegas Artesian Basin, a portion of which was designated by Alfred Merritt Smith by State Engineer's Order No. 175, issued on January 10, 1941. Since this initial order, 118 additional ground-water basins have been designated in part or in their entirety.³ The intent of these designation orders was to provide a mechanism that allowed additional administration of the state's water resources to be emplaced on a basin-by-basin basis. This was accomplished through subsequent orders, rulings and decisions issued by a succession of State Engineers, many of which dealt with the issue of a preferred use of underground water. A preferred use may be declared in a ground-water basin where varied manners of use compete for the same limited ground-water resource. Under the State Engineer's direction, preferred uses of water have been created in several ground-water basins, including the Dayton Valley Hydrographic Basin, where the appropriation of underground water for mining purposes was declared a preferred manner of use through State Engineer's Ruling No. 3446-A, issued on June 30, 1987.⁴ An even higher level of regulation is found within a limited number of ground-water basins, where all but a well-defined group of water right applications will be considered for approval.

The State Engineer finds that he is authorized under the Nevada Revised Statutes to create whatever degree of regulation is necessary to manage and protect the underground water resources of the state, including those present within the Dayton Valley Hydrographic Basin.

II.

Among the primary factors that are considered when assessing the need for additional regulation of a designated ground-water basin is the degree of balance that exists between the ground-water basin's estimated perennial yield and its calculated committed resource. The perennial yield of a ground-water reservoir may be defined as the maximum amount of ground water that can be salvaged each year over the long term without unreasonably depleting the ground-water reservoir. A ground-water basin's perennial yield is ultimately limited to the maximum amount of natural discharge that can

² Designated Groundwater Basins of Nevada Map, 1:750,000, September 2003, official records in the Office of the State Engineer.

³ Hydrologic Basin Abstract Summary Book, official records in the Office of the State Engineer.

⁴ Transcript of Proceedings, Public Hearing in the Matter of Applications 50122, 50123 and 50124, p.94, official records in the Office of the State Engineer.

be salvaged for beneficial use.⁵ The committed resource is represented by the active permits and certificates approved by the State Engineer to appropriate underground water from the ground-water basin. Once the committed resource has been adjusted to account for water rights that are supplemental in nature, the amount of water that each one is permitted to appropriate on an annual basis (annual duty) is added to obtain the committed resource along with all other relevant factors. The perennial yield/committed resource analysis often determines the degree of regulation contemplated for the basin and determines what types of restrictions must be placed on the manner in which underground water is appropriated for use within the basin. Previous State Engineer's rulings have addressed the committed resource/perennial yield relationship as it applies to the Dayton Valley Hydrographic Basin. The findings and conclusions developed in these rulings resulted in the denial of numerous water right applications that requested additional new appropriations of underground water from the ground-water basin.⁶

The State Engineer finds that the refusal to issue permits for additional new appropriations of water, other than de minimis uses, represents an effort by the State Engineer to diminish increases in committed water resources, while safeguarding the recharge side of the Dayton Valley Hydrographic Basin's water budget.

III.

Application 73159 was filed to change water previously appropriated for industrial related purposes under Permits 45903, 52898, 52899 and 62112. It should be noted that Permits 52898, 52899 and 62112 are change applications of the original appropriation under Permit 45903 and share a total combined duty of water that shall not exceed 198.60 million gallons annually. Permits 45903, 52898, 52899 and 62112 indicate their primary manner of use is for production of rock and sand aggregates and includes a crushing plant, asphalt batch plant, aggregate washing, dust control and other industrial and domestic uses associated with the operation of the rock quarry and processing facilities. The permits were issued with the understanding that the appropriation of water for this industrial purpose was, by its nature, a temporary appropriation of water that would terminate with the cessation of the project. An

⁵ Office of the State Engineer, Water for Nevada, State of Nevada Planning Report No. 3, October 1971, p.13.

⁶ Nevada Division of Water Resources Water Rights Database, Rulings Report for Hydrographic Basin 103, April 1, 2005, official records in the Office of the State Engineer.

examination of Permit 45903 shows that it was issued with the following permit term and reflects this understanding:⁷

This permit is issued under the preferred use provisions of NRS Chapter 534. The manner of use of water under this permit is by nature of its activity 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 the resource within the ground water basin.

Every water right permit that is issued by the Office of the State Engineer comes with a set of conditions that must be adhered to by the permittee or any successor in interest. The permit terms, under which Permit 45903 was issued, clearly indicate that the use of this water was to be temporary and any change must be reviewed to determine the potential effects on existing water rights and to determine the availability of water for appropriation. Permits 52898, 52899 and 62112 were allowed to change Permit 45903 because the manner of use did not change and the water under Permits 52898, 52899 and 62112 remained a temporary use for the same industrial (rock quarry) project.

It was not the intention of the State Engineer to issue Permit 45903 as a water right that could be changed at a later date to a permanent consumptive use of water in the ground-water basin. State Engineer's Order No. 487, issued January 22, 1973, underscores this fact as the order was issued to designate the Dayton Valley Hydrographic Basin as a ground-water basin in need of additional administration.⁸ The issuance of State Engineer's Order No. 487 predates Permit 45903, by over 12 years.

Application 73150 proposes to change the manner of use from industrial (rock quarry) to quasi-municipal use. The quasi-municipal use contemplated involves transfer of the water into the Lyon County Utilities' Cardelli Well. Information within File No. 73150 indicates that the water will be used to support a 211-unit planned-use development called Heritage Ranch, within the Dayton area.¹

The State Engineer finds Permits 45903, 52898, 52899 and 62112 were issued for a temporary appropriation of water from the Dayton Valley Hydrographic Basin. The State Engineer further finds that the temporary nature of these industrial permits (Permit Nos. 45903, 52898, 52899 and 62112) makes them unsuitable for changes to a permanent manner of use, such as the quasi-municipal use as proposed under Application 73159.

⁷ File No. 45903, official records in the Office of the State Engineer.

⁸ State Engineer's Order No. 487, January 22, 1973, official record in the Office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁹

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:¹⁰

- 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.

Application 73159 was filed to change the point of diversion, place of use and manner of use of Permit 62112. Permits 45903, 52898, 52899 and 62112 are part of a group of permits that were approved on the basis of the temporary nature of the industrial project served by these permits. The State Engineer concludes that the proposed change would, in effect, replace a temporary use with a permanent use and would as such represent an additional permanent new appropriation of water within the ground-water basin when such uses have been denied other than de minimis uses.

IV.

Application 73159 has the effect of attempting to appropriate ground water for a similar use and within the same basin as previous applications that have been denied in the Dayton Valley Hydrographic Basin. Therefore, the State Engineer concludes that Application 73159 is subject to denial.

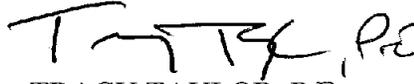
⁹ NRS chapters 533 and 534.

¹⁰ NRS § 533.370(5).

RULING

Application 73159 is hereby denied on the grounds its issuance would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 10th day of
June, 2008.