

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

IN THE MATTER OF APPLICATIONS)
67232, 67371 AND 67372 FILED TO)
APPROPRIATE THE WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE)
PIUTE VALLEY (214), ELDORADO)
VALLEY (167) AND COLORADO RIVER)
VALLEY (213) HYDROGRAPHIC BASINS,)
CLARK COUNTY, NEVADA.)

RULING

#5947

GENERAL

I.

Application 67232 was filed by Joshua Tree Energy, LLC, on February 26, 2001, to appropriate 0.5 cubic feet per second (cfs), not to exceed 200 acre-feet annually (afa), of water from an underground source for a power generating plant within the Piute Valley Hydrographic Basin. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 27, T.28S., R.63E., M.D.B.&M.¹

II.

Application 67371 was filed by Joshua Tree Energy, LLC, on March 23, 2001, to appropriate 0.5 cfs, not to exceed 200 afa, of water from an underground source for use at a power generating plant within the Eldorado Valley Hydrographic Basin. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 15, T.28S., R.63E., M.D.B.&M.²

III.

Application 67372 was filed by Joshua Tree Energy, LLC, on March 23, 2001, to appropriate 0.5 cfs, not to exceed 200 afa, of water from an underground source for use at a power generating plant within the Colorado River Valley Hydrographic Basin. The proposed point of diversion is described as being within the NE¼ NE¼ of Section 26, T.28S., R.63E., M.D.B.&M.³

IV.

Application 67371 and 67372 were timely protested by the U.S. Department of the Interior, Bureau of Land Management (BLM). The Protestant requested that the applications be denied due

¹ File No. 67232, official records in the Office of the State Engineer.

² File No. 67371, official records in the Office of the State Engineer.

³ File No. 67372, official records in the Office of the State Engineer.

to the fact that the Applicant has neither authorization nor have they applied for any authorization to drill a well upon public lands. There is also no authorization to use the water for power generation upon public lands administered by the BLM.^{2,3}

FINDINGS OF FACT

I.

The State Engineer finds that Order No. 964 was issued on February 4, 1988, designating and describing the Piute Valley Hydrographic Basin as a ground-water basin coming under the provisions of Nevada Revised Statutes (NRS) § 534.120 as a basin in need of additional administration.⁴

II.

The State Engineer finds that Order No. 790 was issued on July 8, 1982, designating and describing the Colorado River Valley Hydrographic Basin as a ground-water basin coming under the provisions of NRS § 534.120 as a basin in need of additional administration.⁵

III.

The State Engineer finds that Order No. 965 was issued on February 10, 1988, designating and describing the Eldorado Valley Hydrographic Basin as a ground-water basin coming under the provisions of NRS § 534.120 as a basin in need of additional administration.⁶

IV.

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 depleting the ground-water 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, ground-water levels will decline.

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 ground-water gradients, which could result in significant changes in the recharge-discharge relationship.⁷

⁴ See State Engineer's Order No. 964 dated February 4, 1988, official records in the Office of the State Engineer.

⁵ See State Engineer's Order No. 790 dated July 7, 1982, official records in the Office of the State Engineer.

⁶ See State Engineer's Order No. 965 dated February 10, 1988, official records in the Office of the State Engineer.

⁷ State Engineer's Office, *Water for Nevada*, State of Nevada Water Planning Report No. 3, p. 13, Oct. 1971.

The United States Geological Survey estimates that the perennial yield of the Piute Valley Hydrographic Basin is approximately 600 acre-feet.⁸ The committed ground-water resource in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Piute Valley Hydrographic Basin currently exceeds 4,981 acre-feet annually.⁹ The State Engineer finds that the existing ground-water rights in the Piute Valley Hydrographic Basin exceeds the perennial yield of the ground-water basin.

The United States Geological Survey estimates that the perennial yield of the Eldorado Valley Hydrographic Basin is approximately 500 acre-feet.¹⁰ The committed ground-water resource in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Eldorado Valley Hydrographic Basin currently exceeds 6,673 acre-feet annually.¹¹ The State Engineer finds that the existing ground-water rights in the Eldorado Valley Hydrographic Basin exceeds the perennial yield of the ground-water basin.

The United States Geological Survey estimates that the perennial yield of the Colorado River Valley Hydrographic Basin is approximately 200 acre-feet.¹² The committed ground-water resource in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Colorado River Valley Hydrographic Basin currently exceeds 4,638 acre-feet annually.¹³ The State Engineer finds that the existing ground-water rights in the Colorado River Valley Hydrographic Basin exceeds the perennial yield of the ground-water basin.

V.

The committed ground-water resources in the form of permits and certificates issued by the State Engineer is in excess of 4,900 afa in the Piute Valley Hydrographic Basin, 6,700 afa in the Eldorado Valley Hydrographic Basin and 4,600 afa in the Colorado Valley Hydrographic Basin. The majority of water rights in the Piute Valley and Eldorado Valley Hydrographic Basins are classified as municipal. Quasi-municipal water rights account for the majority of use in the Colorado River Valley Hydrographic Basin.¹⁴ The State Engineer finds that the approval of

⁸ Rush and Huxel, *Water Resources - Reconnaissance Series No. 36, Ground Water Appraisal of the Eldorado-Piute Valley Area, Nevada and California*, p. 14. (1966), (Hereinafter referred to as Reconnaissance Series No. 36).

⁹ Special Hydrologic Basin Abstract, Water Rights Database, Basin 214, October 19, 2007, official records within the Office of the State Engineer.

¹⁰ Reconnaissance Series No. 36.

¹¹ Special Hydrologic Basin Abstract, Water Rights Database, Basin 167, October 19, 2007, official records within the Office of the State Engineer.

¹² Reconnaissance Series No. 36.

¹³ Special Hydrologic Basin Abstract, Water Rights Database, Basin 213, October 19, 2007, official records within the Office of the State Engineer.

¹⁴ Official records in the Office of the State Engineer; Eldorado, Piute and Colorado Valley Hydrographic Summary.

Applications 67232, 67371 and 67372 would result in the additional withdrawal of 200 acre-feet annually, compared to a perennial yield estimated to be a few hundred acre-feet annually in each of the ground-water basins.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.¹⁵

II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:¹⁶

- 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.

Current potential withdrawals from the Eldorado Valley, Piute Valley and Colorado River Valley Hydrographic Basins greatly exceed the perennial yield for each of the ground-water basins. The potential for ground-water quality degradation and adverse effects upon existing water rights would become greater with any additional ground-water appropriation. The State Engineer concludes that the approval of Applications 67232, 67371 and 67372 would allow an additional 200 acre-feet annually to be pumped from the Eldorado Valley, Piute Valley and Colorado River Valley Hydrographic Basins where ground-water quality within these basins is generally considered to be marginal, for municipal use. Therefore, increased withdrawals could have a significant impact on water of already poor quality.

IV.

Applications 67232, 67371, and 67372 are new appropriations for power use in the Eldorado Valley, Piute Valley and Colorado River Valley Hydrographic Basins, which are over appropriated designated basins.

¹⁵ NRS chapters 533 and 534.

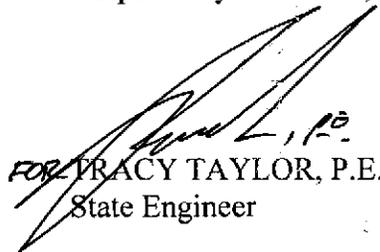
¹⁶ NRS chapter § 533.370(5).

The potential for ground-water quality degradation and adverse effects upon existing water rights would become greater with any additional ground-water appropriation. The State Engineer concludes there is no unappropriated water available to support these applications and to grant the applications would conflict with existing rights and threaten to prove detrimental to the public interest.

RULING

Applications 67232, 67371 and 67372 are hereby denied on the grounds that the granting thereof would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,



FOR TRACY TAYLOR, P.E.
State Engineer

TT/JT/jm

Dated this 11th day of
February, 2009.