

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

IN THE MATTER OF APPLICATIONS 73957, 75043)
AND 73959 FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE ELKO SEGMENT (49) AND MARYS)
CREEK AREA (52) HYDROGRAPHIC BASINS,)
ELKO COUNTY, NEVADA.)

RULING
5988

GENERAL

I.

Application 73957 was filed on March 3, 2006, by Elko County to appropriate 6.0 cubic feet per second (cfs), not to exceed 4,000 acre-feet annually (afa), of ground water from the Elko Segment Hydrographic Basin for municipal and domestic purposes. The proposed place of use is described as being located within Sections 1 through 36 in T.33N., R.54E., R.55E., and R.56E., M.D.B.&M., Sections 1 through 36 in T.34N., R.54E., R.55E., and R.56E., M.D.B.&M., Sections 1 through 36 in T.35N., R.54E., R.55E., and R.56E., M.D.B.&M. and Sections 1 through 36 in T.36N., R.54E., R.55E., and R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T.33N., R.54E., M.D.B.&M.¹

II.

Application 75043 was filed on November 9, 2006, by Elko County to appropriate 3.0 cfs, not to exceed 2,000 afa, of ground water from the Elko Segment Hydrographic Basin for municipal and domestic purposes. The proposed place of use is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, and Section 10 lying south of Interstate Highway 80 R/W, the W $\frac{1}{2}$ of Section 11 and the NW $\frac{1}{4}$ of Section 15 all in T.35N., R.56E., 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 Section 10, T.35N., R.56E., M.D.B.&M.²

III.

Application 73957 was timely protested by Maggie Creek Ranch, LP, on the grounds that the point of diversion and a portion of the place of use are on the Protestant's property and would interfere with the Protestant's water rights. Application 73957 was timely protested by Sandy Davis, Doyle Tow and Coni D. Steward on the grounds that the appropriation would affect the

¹ File No. 73957, official records in the Office of the State Engineer.

² File No. 75043, official records in the Office of the State Engineer.

domestic wells in the area surrounding the new well and could also affect the surface waters that are used by livestock and wildlife. Application 73957 was timely protested by Dorsey Land, LLC, on the grounds that a portion of the place of use is on the Protestant's property, that the use of the water could also affect the Protestant's senior water rights, and that granting the application will make it more difficult in the future to appropriate water. Application 73957 was timely protested by Boyd Ranch, LLC, on the grounds that the new appropriation of a large-draft well will diminish surface flows in the streams located in the area surrounding the point of diversion, which would conflict with the Protestant's surface-water rights.¹

IV.

Application 73959 was filed on March 3, 2006, by Elko County to appropriate 3.0 cfs, not to exceed 2,000 afa, of ground water from the Marys Creek Area Hydrographic Basin for municipal and domestic purposes. The proposed place of use is described as being located within all of Sections 1 through 36, T.32N., R.52E., and R.53E. and all of Sections 1 through 36, T.33N., R.52E., and R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SE¼ of Section 29, T.33N., R.52E., M.D.B.&M.³

V.

Application 73959 was timely protested by Coni D. Steward, Sandy Davis and Doyle Tow on the grounds that the appropriation would affect the domestic wells in the area surrounding the new well and could also affect the surface waters that are used by livestock and wildlife. Application 73959 was timely protested by Maggie Creek Ranch, LP, on the grounds that a portion of the proposed place of use is on land owned by the Protestant and the Applicant has not obtained the Protestant's consent to use the property and the use of the water would interfere with Protestant's senior water rights. Application 73959 was timely protested by Dorsey Land, LLC, on the grounds that a portion of the place of use is on the Protestant's property, that the use of the water could also affect the Protestant's senior water rights, and that granting the application will make it more difficult in the future to appropriate water. Application 73959 was timely protested by Boyd Ranch, LLC, on the grounds that the new appropriation of a large-draft well will diminish surface flows in the streams located in the area surrounding the point of diversion, which would conflict with the Protestant's surface-water rights.³

³ File No. 73959, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

The State Engineer issued Order No. 778 on December 8, 1981, designating and describing a portion of the Elko Segment Hydrographic Basin as a ground-water basin coming under the provisions of chapter 534 of the Nevada Revised Statutes. The State Engineer issued Order No. 864 on July 10, 1985, designating and describing the remaining portion of the Elko Segment Hydrographic Basin as a ground-water basin coming under the provisions of chapter 534, Nevada Revised Statutes.⁴ The State Engineer issued Order No. 872 on July 18, 1985, stating that municipal, quasi-municipal and domestic uses are considered preferred uses within the described area of the Elko Segment Hydrographic Basin. A portion of the described area is that portion of Sections 26, 33, 34 and 35 of T.33N., R.52E., M.D.B.&M. lying southerly of the Humboldt River.⁵ The proposed point of diversion under Applications 73957 and 75043 are within the area designated under State Engineer's Order No. 864, but are not within the preferred use area designated under State Engineer's Order No. 872.

II.

The State Engineer issued Order No. 868 on July 18, 1985, designating and describing the Marys Creek Area Hydrographic Basin as a ground-water basin coming under the provisions of chapter 534 of the Nevada Revised Statutes. The State Engineer issued Order No. 872 on July 18, 1985, designating and describing municipal, quasi-municipal and domestic use as preferred uses of water within certain areas of the Marys Creek Area Hydrographic Basin.⁶ The proposed point of diversion under Application 73959 is within the area designated under State Engineer's Order No. 868, but is not within the preferred use area designated under State Engineer's Order No. 872.

III.

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. The perennial yield cannot be more than the natural recharge to a ground-water basin and in some cases is less. If the perennial yield is

⁴ State Engineer's Order No. 778, dated December 8, 1981, and State Engineer's Order No. 864, dated July 10, 1985, official records in the Office of the State Engineer.

⁵ State Engineer's Order No. 872, dated July 18, 1985, official records in the Office of the State Engineer.

⁶ State Engineer's Order No. 868, dated July 18, 1985, and State Engineer's Order No. 872, dated July 18, 1985, official records in the Office of the State Engineer.

exceeded, ground-water levels will decline and steady-state conditions will not be achieved, a situation commonly referred to as ground-water mining. Additionally, withdrawals of ground water in excess of the perennial yield may contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased economic pumping lifts, and land subsidence.⁷

The United States Geological Survey estimates that the perennial yield of the Elko Segment Hydrographic Basin combined with that of the Marys Creek Area Hydrographic Basin is approximately 13,000 acre-feet.⁸ The committed ground-water resource in the form of permits and certificates to appropriate underground water from the Elko Segment Hydrographic Basin and the Marys Creek Area Hydrographic Basin, currently exceed 26,129 afa and 1,939 afa, respectively.⁹ The State Engineer finds that existing ground-water rights in those basins exceed the combined perennial yield of those ground-water basins.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁰

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:¹¹

- 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 current potential withdrawals from the Elko Segment and Marys Creek Area Hydrographic Basins exceed the perennial yield of the ground-water basins

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

⁸ T.E. Eakin, R.D. Lamke, *Hydrologic Reconnaissance of the Humboldt River Basin, Nevada*, Water Resources Bulletin No. 32, Nevada Department of Conservation and Natural Resources, p. 58, 1966.

⁹ Special Hydrologic Basin Abstract, Water Rights Database, Basin 49, May 2009, official records in the Office of the State Engineer.

¹⁰ NRS chapters 533 and 534.

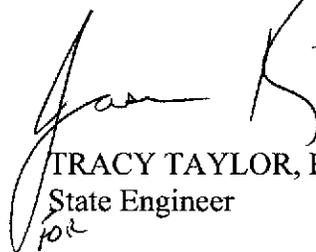
¹¹ NRS § 533.370(5).

and that the potential for ground-water quality degradation and adverse effects upon existing water rights would become greater with any additional ground-water appropriation.

RULING

Applications 73957, 75043 and 73959 are hereby denied on the grounds that the granting thereof would adversely affect existing rights and thereby threaten to prove detrimental to the public interest.

Respectfully submitted,

 P.E.
TRACY TAYLOR, P.E.
State Engineer
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TT/JED/jm

Dated this 8th day of
May 2009