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

IN THE MATTER OF APPLICATION 74765 FILED TO APPROPRIATE THE PUBLIC WATERS OF AN UNDERGROUND SOURCE WITHIN THE CLOVER VALLEY HYDROGRAPHIC BASIN (177), ELKO COUNTY, NEVADA.	)	**RULING** **#6002**

GENERAL

I.

Application 74765 was filed on September 20, 2006, by Martha P. Hoots, to appropriate 0.05 cubic feet per second of water from an underground source for stock watering purposes within Section 34, T.36N., R.62E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of said Section 34.[1]

II.

Application 74765 was timely protested by the State of Nevada, Department of Transportation (NDOT) on the grounds summarized below: [1]

1. The well filed for under Application 74765 is located on land owned by Ms. Hoots subject to existing Material Site Right-of-Way granted to the State of Nevada by the Bureau of Land Management (BLM) when the land was owned by the BLM. Granting the application will conflict with the existing use of the Material Site Right-of-Way.
2. The existing well filed for under Application 74765 was a temporary well drilled under Waiver-C-237 used by an NDOT contractor for highway construction purposes. Allowing a well to permanently exist in NDOT's Material Site Right-of-Way conflicts with NDOT's right to extract materials for future highway projects.
3. "Pursuant to N.R.S. 533.370, the State Engineer shall reject an application and refuse to issue a requested permit if the proposed use conflicts with existing

[1] File No. 74765, official records in the Office of the State Engineer.

rights or any other fact the State Engineer determines to be relevant. N.R.S. 533.370 (5); 533.370(6)(e)."

III.

The Applicant filed an Opposition to Protest to NDOT's protest of application 74765 on the grounds summarized below: [1]

1. Without consent or knowledge of the landowner, Frehner Construction in conjunction with NDOT placed a well on Ms. Hoots' property.
2. NDOT's protest is based on NRS 533.370(5) and NRS 533.370(6). NRS 533.370(6) specifically refers to an interbasin transfer and Application 74765 does not involve an interbasin transfer; therefore, the statutory provision cited is inapplicable.
3. NRS 533.370(5) refers to interference with existing rights or protectible interests in existing domestic wells as set forth in NRS 533.024. There are no other interferences with other water uses cited and none are known to exist. Additionally, it is believed that the basin in which the well is located has unappropriated subsurface water. The granting of the water permit would neither interfere with existing water uses nor can NDOT demonstrate that Ms. Hoots' application is detrimental to the public interest.
4. NDOT has exceeded its rights under a material right-of-way by installing a well and by insisting that the NDOT has the exclusive right of the usage of the material site. The usage by NDOT of the material site is not exclusive and the owner is not prohibited from usage.
5. NDOT obtained no permission from the underlying land owner for the installation of the well.

FINDINGS OF FACT

I.

Nevada Revised Statute § 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 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.

A temporary well was drilled September 12, 2005, in the NDOT Material Site Right-of-Way located within the NW¼ NW¼ of Section 34, T.36N., R.62E., M.D.B.&M. under Waiver C-237 to support Highway 93 construction operations under NDOT Contract No. 3278. The waiver was to expire on December 31, 2006, and the well was to be plugged within thirty days from the expiration date. Application 74765 was applied for on September 20, 2006, using the well drilled under Waiver C-237 as the proposed point of diversion. NDOT protested Application 74765 on November 14, 2006. Due to the protest, the expiration of Waiver C-237 was extended to June 30, 2007, to allow the Applicant and Protestant time to resolve the protest. The well drilled under Waiver C-237 was plugged April 25, 2007. A letter to the Office of the State Engineer on behalf of the Applicant on October 25, 2007, expressed the Applicant's desire to continue to pursue Application 74765. The proposed point of diversion and place of use are located within the Applicant's patented land, which was transferred to private ownership in 2001. NDOT appears to have a Material Site Right-of-Way on a portion of this land. The State Engineer finds the issuance of any permit under Application 74765 will not give the Applicant rights of ingress or egress and does not alleviate the need for any other additional permitting that may be required. The State Engineer finds that the issue of the Material Site Right-of-Way is between the Applicant and the Protestant.

III.

The protest cites to NRS § 533.370(6)(e), which states that in determining whether an application for an interbasin transfer of groundwater must be rejected pursuant to this section, the State Engineer shall consider any other factor the State Engineer determines to be relevant. The State Engineer finds that Application 74765 is not an interbasin transfer of groundwater.

IV.

Existing groundwater permits and certificates issued in the Clover Valley Hydrographic Basin exceed 17,400 acre-feet annually (afa); the estimated annual

recharge to the basin is 10,000 afa. The State Engineer finds that Application 74765 could only be issued supplemental to the Applicant's existing stock-water rights.

VI.

Nevada Revised Statute 533.370(5) states that the State Engineer shall reject the application and refuse to issue the requested permit if the proposed use conflicts with existing rights. The term existing rights refers to existing **water** rights, not rights-of-way or any other right. A review of records on file in the Office of the State Engineer shows no other water rights at the proposed point of diversion. The State Engineer finds Application 74765 will not conflict with existing rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[2]

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:[3]

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 74765 requests approximately 22.403 acre-feet of underground water sufficient to water 1,000 head of cattle annually from the Clover Valley Hydrographic Basin. By granting the application as supplemental to the Applicant's existing stock-water rights, the State Engineer concludes the granting of a new appropriation for livestock will not increase the consumptive use in the basin but only add a new location for watering the same stock that are watered by the Applicant's other stock-water wells. The State Engineer concludes there will be no additional water used by granting this

[2] NRS chapters 533 and 534.
[3] NRS § 533.370(5).

application and the application will not conflict with, interfere with, or impair the value of existing rights.

IV.

The Protestant has not shown the State Engineer that granting Application 74765 for a new well would conflict with existing water rights or that the proposed use would be detrimental to the public interest; therefore, the State Engineer concludes the protest may be overruled.

RULING

The protest to Application 74765 is hereby overruled and Application 74765 is approved for supplemental stock-water purposes only, subject to existing rights, Nevada Revised Statutes regarding rights-of-way, and payment of the statutory permit fees.

Respectfully submitted,

TRACY TAYLOR, P.E.
State Engineer

Dated this 6th day of

August, 2009.