

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

IN THE MATTER OF APPLICATION)
71043 FILED TO APPROPRIATE THE)
UNDERGROUND WATERS OF THE)
MESQUITE VALLEY (SANDY)
VALLEY) HYDROGRAPHIC BASIN)
(163), CLARK COUNTY, NEVADA.)

RULING

6011

GENERAL

I.

Application 71043 was filed on April 15, 2004, by the Sandy Valley Public Water Preservation Association to appropriate 1.7095 cubic feet per second, not to exceed 1,237.59 acre-feet annually, of the underground water of the Mesquite Valley (Sandy Valley) Hydrographic Basin for municipal purposes within the Mesquite Valley as designated in State Engineer's Order No. 701.¹ The remarks section of the application indicates that the application was filed for the preservation of public waters in accordance with NRS § 533.025 for municipal use, including domestic use, in accordance with NRS § 533.330.

II.

Application 71043 was timely protested by Vidler Water Company, Inc., on the grounds that Nevada Revised Statute § 533.025 provides that the water supply within the boundaries of the state belongs to the public; thus, there is no need for the preservation of public waters. The Protestant alleges that the application conflicts with NRS § 533.330, which provides that only one use be made per application and this application proposes both municipal use and preservation and the lack of a specific use for the water is indicative of speculation. The Protestant asserts that even if there was a clear use for the water, it is doubtful the Applicant has the financial ability to complete the works of diversion and bring the water to beneficial use and the Protestant has senior applications in this ground-water basin that are not speculative.¹

FINDINGS OF FACT

I.

By letter dated May 4, 2009, the Office of the State Engineer requested the Applicant provide additional information noting that the application lacked statutorily required information and the remarks section of the application indicates there is no present intent for placing the

¹ File No. 71043, official records in the Office of the State Engineer.

water to beneficial use. The letter indicated that there is nothing in Nevada Water Law that allows a private association to file for water just to hold on to it for future use and the citation to NRS § 533.025 does not provide that authority. The Office of the State Engineer requested the Applicant to provide specific information in support of the application, such information to include the approximate number of persons to be served, the approximate future requirement, who is to be the actual provider of the water since the Applicant is not a municipality, and the quantity of water estimated for specific projects.

In response, by letter dated June 1, 2009, the Applicant stated that the approximate number of persons to be served is 6,262 but that at this time there is “no ‘future requirement’.” The Applicant noted that its intention is to assure that the water in Sandy Valley will be available to home owners in the basin and indicated that it will make the water available to these home owners. The Applicant, in an attempt to demonstrate work carried out towards having a project refers to; one study, an application filed for non-profit status with the Nevada Secretary of State, the filing of the water right application in 2004, the name of a law firm that would handle the legal aspects of the application, the name of the engineering firm that drew up the map that was required to be filed as part of the application, it notes meetings have been held on the downturn in the economy and status of the application, exploration of alternative energy to operate pumps, contact with the local electrical company and investigating funding for rural area development. The gist of the response is that the application was filed to prevent others from appropriating the ground water in the basin.

The State Engineer finds the Applicant did not demonstrate any specific current project or beneficial use for the water.

II.

Nevada Revised Statute § 533.035 provides that beneficial use shall be the basis, the measure and the limit of the right to the use of water. Nevada Revised Statute § 533.060 provides that the right to use water must be limited and restricted to as much as may be necessary when reasonably and economically used for a beneficial purpose. Nevada Revised Statute § 533.070 provides that the quantity of water that may be appropriated is limited to such water as shall be reasonably required for the beneficial use to be served. Nevada Revised Statute § 533.340(3) provides that an application for municipal purposes shall contain the approximate number of persons to be served and the approximate future requirement. Nevada Revised Statute § 533.370 requires that an applicant provide the State Engineer with proof satisfactory of his

intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence and the financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.

The State Engineer finds the Applicant did not demonstrate any specific project currently proposed in which water would be used. The State Engineer finds the Applicant did not demonstrate a quantity of water that would reasonably be required for a specific beneficial use. The State Engineer finds the Applicant merely indicated that it wanted to hold on to any water available in the ground-water basin for those who are current homeowners, many of which are now on private domestic wells. The State Engineer finds the Applicant did not demonstrate any specific project to be constructed, what that project might cost or that it had the financial ability or reasonable expectation that it would actually construct a project to supply water to all the homeowners in Sandy Valley with reasonable diligence.

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 to appropriate the public waters 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.

The State Engineer concludes the Applicant has not provided adequate evidence that it meets any of the statutory criteria under the provisions of NRS § 533.035, 533.060, 533.070, 533.340(3) and 533.370; therefore, to grant the application would threaten to prove detrimental to the public interest.

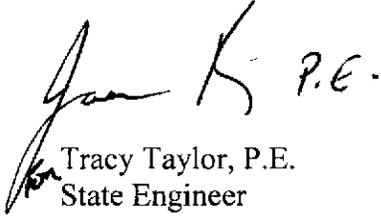
² NRS Chapters 533 and 534.

³ NRS 533.370(5).

RULING

Application 71043 is hereby denied on the grounds that the Applicant has not met the statutory criteria for demonstrating beneficial use and to grant the application would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,


Tracy Taylor, P.E.
State Engineer

Dated this 11th day of
September, 2009.