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

IN THE MATTER OF APPLICATIONS) 77693, 77693-S01 AND 77693-S02 FILED) TO APPROPRIATE EFFLUENT WITHIN) THE IVANPAH VALLEY - NORTHERN) PART HYDROGRAPHIC BASIN (164A),) CLARK COUNTY, NEVADA.)	**RULING** **#6013**

GENERAL

I.

Application 77693 was filed on December 17, 2008, by Jean Development Company, d.b.a. Gold Strike Hotel & Gambling Hall to appropriate 1.006 cubic feet per second (cfs), not to exceed 728 acre-feet annually (afa), of effluent for storage purposes. The proposed place of use is described as being located within the NW¼ NW¼ of Section 13, T.25S., R.59E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of said Section 13. The remarks section of the application indicates that the intent is to distribute effluent water that is generated by a treatment plant to be used for irrigation and ground-water recharge via disposal in rapid infiltration basins.[1]

II.

Application 77693-S01 was filed on December 17, 2008, by Jean Development Company, d.b.a. Gold Strike Hotel & Gambling Hall to appropriate 1.006 cfs, not to exceed 728 afa, of effluent for irrigation purposes. The proposed place of use is described as being located within a portion of the SE¼ of Section 11, a portion of the SW¼ of Section 12, a portion of the NW¼ NW¼ of Section 13, and a portion of the NE¼ of Section 14, T.25S., R.59E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of said Section 13.[2]

III.

Application 77693-S02 was filed on December 17, 2008, by Jean Development Company, d.b.a. Gold Strike Hotel & Gambling Hall to appropriate 1.006 cfs, not to exceed 728 afa, of effluent for ground-water recharge purposes via disposal in rapid infiltration basins. The proposed place of use is described as being located within a portion of the SE¼ NW¼ of Section 13, T.25S.,

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[1] File No. 77693, official records in the Office of the State Engineer.
[2] File No. 77693-S01, official records in the Office of the State Engineer.

R.59E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of said Section 13.[3]

IV.

Application 77693 was timely protested by the Las Vegas Valley Water District on the following grounds:

> The Las Vegas Valley Water District (LVVWD or Protestant) water system at Jean, Nevada consists of several wells and distribution systems that supply both potable and non-potable water to residential and commercial customers in the basin, including Applicant's Gold Strike Casino.
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> Protestant owns multiple water rights in the basin. Specifically, Protestant owns Permits 17691 (Certificate 6058), 21997 (Certificate 8378), 51133 (Certificate 13800), 51543 (Certificate 13801), 51544 (Certificate 13802), 52732 (Certificate 14634), 52733, 52734, 52735 (Certificate 14635), 54983, and 76210 and protests the granting of Application No. 77693 on the following grounds:
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> 1) No Water Available for Appropriation. The source of the water sought for appropriation under Application No. 77693 is fully appropriated and there is no additional water from this source available for appropriation. Since the early 1990s, Protestant has received annual credit for the infiltration of the effluent from the Rapid Infiltration Basin ponds (RIBs) that are the source of the water sought for appropriation under Application No. 77693. These recharge credits are a critical component in LVVWD's ability to provide municipal water service to existing customers in the Jean area, including the Applicant.
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> 2) Harm to Senior Water Rights. In determining the permitted annual withdrawal of water allowed under LVVWD's Permits, credit for the recharge back into the groundwater basin from the RIBs is given and will continue to be given based on data supplied to the State Engineer by LVVWD. Said recharge credit allows for additional pumping under LVVWD's permits. These recharge credits provide the basin with additional Municipal water rights that service residential and commercial facilities in the basin, including the Nevada State Prison and Applicant's Gold Strike Casino. Approving Application No. 77693 would diminish LVVWD's senior water rights, which are based in part on the recharge credits the Applicant seeks to appropriate.
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> 3) Detrimental to Public Interest. If Application No. 77693 is granted, LVVWD's ability to provide municipal service to the public in the basin will be significantly impaired, including service to the Nevada State Prison and Applicant's Gold Strike Casino. Therefore, granting Application No. 77693 would be detrimental to the public interest and Application No. 77693 should be denied.[1]

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[3] File No. 77693-S02, official records in the Office of the State Engineer.

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 in the case of protested Application 77693, and related secondary applications, 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.

By letter dated March 18, 2009, the Applicant was requested to provide the State Engineer with information describing the source of the effluent and to provide water right permit numbers that provide water to the source of the effluent. In response, the Applicant informed the State Engineer that the source is sanitary sewer flow from Jean Development properties and the water uses at those properties is purchased from the Las Vegas Valley Water District. The Applicant also noted that the current discharge practices for the effluent is that it is used for irrigation with the excess water being discharged to rapid infiltration basins. The State Engineer finds the Applicant did not provide information as to any water right permit number that demonstrates it's the water right holder to the source of the effluent water.

III.

Protestant LVVWD owns multiple water rights in the basin. Specifically, Protestant owns Permits 17691, 21997, 51133, 51543, 51544, 52732, 52733, 52734, 52735, 54983, and 76210. On November 28, 1988, the LVVWD filed Applications 52735 and 52736 requesting to appropriate additional water from the ground-water basin. Application 52735 was filed to appropriate 16.0 afa of non-potable water from the Jean Well that would be combined with other water rights already existing on that well for fire protection and irrigation to the town, prison, hotels and casinos at Jean. Application 52736 was filed to appropriate an additional 135.404 afa of potable water from the Gold Strike Well that would be combined with other water rights already existing on that well and on State Well to provide a potable water source to the town, prison, hotels and casinos at Jean. Application 54983 was filed on June 22, 1990, to change the point of diversion of the water filed for appropriation under Application 52736.

When Applications 52735, 52736 and 54983 were under consideration, the LVVWD provided additional information in support of the applications. By letter dated December 9, 1992, the LVVWD provided the State Engineer with information intended to document the justification and need for the additional 151.404 afa of water rights from the LVVWD's production wells J-4 and the Jean Well (J-1) at Jean, Nevada. The justification was based on the projected water demands through the year 2000 and on the steadily increasing volume of artificial recharge through the infiltration of secondary effluent from the Gold Strike Casino rapid infiltration basin.[4] The LVVWD described its water system at Jean as consisting of several wells and a distribution system which supplied both potable and non-potable water. The system consists of three wells: State (J-2), Gold Strike (J-3) and J-4 located west of I-15, which produce potable water and the Jean Well (J-1), located east of I-15, which produces non-potable water for irrigation purposes only. Since beginning in 1988, effluent from the Gold Strike sewage treatment plant has been utilized in part for irrigation. The LVVWD supplies water from the Jean area wells to the following major users: Gold Strike and Nevada Landing Hotel/Casino complex, State Prison, Letica (plastics manufacturer) and other scattered residential and commercial users. The letter describes the sewage treatment plant being operated by the Gold Strike Casino with disposal to rapid infiltration basins or landscape irrigation and estimates the total recharge reaching the aquifer from these rapid infiltration basins and requests credit for this recharge in order to grant Applications 52735 and 54983 and by implication also Application 52736.

By letter dated March 26, 1993, the LVVWD provided additional information in support of having the applications granted indicating that it would operate the Jean wells on a rotating schedule under an aggregated water right. The reason for a rotating schedule is a concern for water quality in the potable water wells.[5]

When the State Engineer granted Applications 52735 and 52736 on April 27, 1993, and Application 54983 on June 1, 1993, he issued them as supplemental to Permits 17691, 21997, 51133, 51543, 51544, 52732, 52734, 52735 and 52736 for a total combined duty of 653.4 afa. "In determining the permitted annual withdrawal of water allowed under these permits, credit for recharge back into the groundwater basin will be given based on data supplied to the State Engineer by the permittee."[6]

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[4] File No. 54983, official records in the Office of the State Engineer.
[5] *Ibid.*
[6] *See*, Permit 52736, official records in the Office of the State Engineer.

The State Engineer finds that the source of the water the Applicant seeks to appropriate is not available for appropriation as it is part of the water right granted to the LVVWD and there is no additional water from this source available for appropriation. Since the early 1990s, Protestant has received annual credit for the infiltration of the effluent from the rapid infiltration basin ponds that are the source of the water sought for appropriation under Application No. 77693. These recharge credits are a critical component in LVVWD's ability to provide municipal water service to existing customers in the Jean area, including the Applicant. The State Engineer finds that a portion of the water rights available for use at Jean are contingent upon the accounting of this recharge through the rapid infiltration basins. The State Engineer finds that Permits 52735, 52736 and 54983 are conditioned on a total quantity of water and recharge credit for water discharged to the rapid infiltration basins. The State Engineer finds to grant a permit under Application 77693 and its related secondary applications would interfere with existing senior water rights held by the LVVWD and would thereby threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[7]

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:[8]

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 there is no unappropriated water at the proposed source and to grant Application 77693, and its related secondary applications, would impair existing water rights and thereby threaten to prove detrimental to the public interest.

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[7] NRS Chapters 533 and 534.
[8] NRS § 533.370(5).

RULING

Applications 77693, 77693-S01 and 77693-S02 are hereby denied on the grounds that the water is not available for appropriation and the proposed use would impair the value of existing rights and thereby threaten to prove detrimental to the public interest.

Respectfully submitted,

TRACY TAYLOR, P.E.
State Engineer

Dated this 15th day of September, 2009.