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

IN THE MATTER OF PROTESTED APPLICATIONS 78751 AND 78752 FILED TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE OF A PORTION OF THE PUBLIC WATERS OF AN UNDERGROUND SOURCE PREVIOUSLY APPROPRIATED UNDER PERMITS 74422 AND 74421, RESPECTIVELY, WITHIN THE WINNEMUCCA SEGMENT HYDROGRAPHIC BASIN (70), HUMBOLDT COUNTY, NEVADA.	**RULING** **#6025**

GENERAL

I.

Application 78751 was filed on July 20, 2009, by Echeverria Pumping, LLC, to change the point of diversion and place of use of 0.0934 cubic feet per second (cfs), not to exceed 10 acre-feet annually (afa), a portion of the underground water previously appropriated under Permit 74422. The proposed manner of use and place of use is described as being for commercial purposes within portions of the NE¼ NW¼, SE¼ NW¼, NE¼ SW¼, NW¼ NE¼, SW¼ NE¼ and the NW¼ SE¼, all in Section 29, T.36N., R.37E., M.D.B.&M. The existing place of use is described as being located within a portion of the W½ NW¼ of Section 17, T.36N., R.38E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 29, T.36N., R.37E., M.D.B.&M. The existing point of diversion is within the NW¼ NW¼ of Section 17, T.36N., R.38E., M.D.B.&M.[1]

II.

Application 78752 was filed on July 20, 2009, by Echeverria Pumping, LLC, to change the point of diversion and place of use of 0.155 cfs, not to exceed 10 afa, a portion of the underground water previously appropriated under Permit 74421. The proposed manner of use and place of use is described the same as that under Application 78751. The existing place of use is described as being located within a portion of the W½ NW¼ of Section 17, T.36N., R.38E., M.D.B.&M. The proposed point of diversion is described as being located within the

[1] File No. 78751, official records in the Office of the State Engineer.

NW¼ SE¼ of Section 29, T.36N., R.37E., M.D.B.&M. The existing point of diversion is within the NW¼ NW¼ of Section 17, T.36N., R.38E., M.D.B.&M.[2]

III.

Applications 78751 and 78752 share the same proposed point of diversion and propose a total combined duty of 10 afa.

IV.

Application 78751 was timely protested by Keith and Janet Kubichek on the following grounds:[1]

> The well could impact our water in well and existing wells in area. There are 2 new wells in proximity.

Application 78752 was timely protested by Keith and Janet Kubichek Desert Disposal on the following grounds:[2]

> The well could impact our well and existing wells in area. We need water rights protected for future use. There are 2 new wells in proxmity.

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 Applications 78751 and 78752 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 review of the records on file in the Office of the State Engineer show the Protestant is the owner of Permits 76652 and 76653 which have a total combined duty of water of 10 afa. The point of diversion of water under Permits 76652 and 76653 is located approximately 2,290 feet west of the proposed point of diversion under Applications 78751 and 78752. In consideration of a water right application, the State Engineer must take into account, among other things, the effect of the application on existing rights. Nevada water law does not prevent the granting of permits to applicants later in time on the grounds that the diversions under the proposed later

[2] File No. 78752, official records in the Office of the State Engineer.

appropriations may cause lowering of the static water level at the point of diversion of a prior appropriator, so long as the rights of existing appropriators can be reasonably satisfied.[3]

The Office of the State Engineer conducts annual water-level measurements at select wells within the Winnemucca Segment Hydrographic Basin (70). The closest well to the Protestant's well that is part of the water-level measurements conducted by the Office of the State Engineer is located approximately 2,500 feet to the northwest of the Protestant's well. During the previous 14 years, measurements at the subject well indicate that the water level in this area is holding steady with a water-level measurement of 102.92 feet below ground level recorded on March 20, 1996, and a water level measurement of 102.84 feet below ground level recorded on March 18, 2009.[4]

The State Engineer finds that the quantity of water requested to be moved under Applications 78751 and 78752 is minimal and would not impair existing groundwater rights in an area where water levels have remained steady under existing pumping for at least the last 14 years.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[5]

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:[6]

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 that the effects of pumping 10 afa under the subject applications at their proposed point of diversion would be reasonable to existing rights and the

[3] NRS § 534.110 (5).
[4] Water Level Database, official records in the Office of the State Engineer.
[5] NRS Chapters 533 and 534.
[6] NRS § 533.370(5).

overall health of the groundwater basin; therefore, the approval of Applications 78751 and 78752 will not conflict with existing rights or threaten to prove detrimental to the public interest.

RULING

The protests are overruled and Applications 78751 and 78752 are hereby approved subject to existing rights and the payment of statutory permit fees.

Respectfully submitted,

TRACY TAYLOR, P.E.
State Engineer

Dated this 11th day of February, 2010.