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

IN THE MATTER OF APPLICATION 79638)
FILED TO CHANGE THE MANNER OF USE)
OF WATER PREVIOUSLY APPROPRIATED)
UNDER PERMIT 78678 WITHIN THE)
CARSON VALLEY HYDROGRAPHIC BASIN)
(105) DOUGLAS COUNTY, NEVADA.)

RULING

#6053

GENERAL

I.

Application 79638 was filed on February 24, 2010, by Sierra Nevada SW Enterprises to change the manner of use of 3.41 cubic feet per second, not to exceed 1,237.12 acre-feet annually, of groundwater under Permit 78678. The existing manner of use is for irrigation and domestic purposes and the proposed manner of use is for quasi-municipal and domestic purposes. The existing place of use is identified as being located within 309.28 acres in Sections 3 and 10, T.12N., R.20E., M.D.B.&M.[1]

II.

Application 79638 was timely protested by the Gardnerville Town Water Company on the following grounds:

> 1. The Gardnerville Town Water Company (GTWC) Well Number 9 is in close proximity to the proposed Point of Diversion that is shown on the Map to Accompany Application to Change the Point of Diversion, Application 79638. The Nevada State Engineer's Office should not grant a change in water rights to a higher use within or close to a major production well. The requested production well called out in application 79638 could adversely affect the draw down and cone of influence for GTWC Well Number 9.
>
> 2. Application 79638 will cause an adverse affect on existing water rights owned by the Gardnerville Town Water Company.
>
> 3. Application 79638 is not in the public interest due to the proposed Point of Diversion being located in an area where there is presently a water utility with an adopted Water Rights Master Plan. In October, 2007, GTWC submitted to the Nevada State Engineer's Office a Water Rights Master Plan for Water Rights permits 60576, 60607, 60608, 60609, 60610, 60611, 60612, 60613, 60614 and 60615. The GTWC Water Rights Master Plan includes water demand allocations for recorded plat maps, tentative maps and expansion of the Town of Gardnerville

[1] File No. 79638, official records in the Office of the State Engineer.

Town limits. The Town of Gardnerville Town limits coincide with the GTWC Service Area Boundary.

The proposed point of diversion called out in Application 79638 is located within the Virginia Ranch Development, which was annexed into the GTWC Service Area in April, 2005 as approved by the Nevada State Public Utilities Commission. AS listed in the GTWC Water Rights Master Plan and the Annexation Docket approved by the Nevada PUC, the Gardnerville Town Water Company stands ready to serve the Virginia Ranch Development.

4. A change in manner of use from supplemental ground water rights to quasi-municipal and domestic as proposed in Application 79638 would set a precedent toward other supplemental ground water rights that exist throughout the Carson Valley.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 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 79638 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.

Application 79638 proposes to change the manner of use of Permit 78678. Permit 78678 changed the point of diversion and place of use of a portion of Permit 18976, Certificate 5975. When Application 18976 was filed for irrigation and domestic purposes, in the remarks section of the application the Applicants specifically indicated that they were filing for a supplemental water right; "This water will be used to supplement the natural river flow to irrigate these lands, under the Carson River Decree."[2] The permit that was issued pursuant to Application 18976 reflects the supplemental nature of the water right granted by the language that indicates that the amount of water allowed to be appropriated was limited to "a yearly duty of 4.0 acre-feet per acre of land irrigated from all sources." When the original permittee under Permit 18976 filed their Proof of Application of Water to Beneficial Use they specifically indicated in the remarks section that "[t]his

[2] File No. 18976, official records in the Office of the State Engineer.

water is supplemental to decreed water from the Carson River."[3] Finally, the certificate issued from the proof of beneficial use again indicated the supplemental nature of the water right in that the "total duty of water for the land under this Certificate shall not exceed 4.0 acre-feet per acre annually from all sources."[4] The State Engineer finds while the certificate reflects a full 4.0 acre-feet per acre total annual duty of 1,478.64, it also very clearly indicates this is a supplemental water source.

III.

Protestant GTWC asserts that a change in manner of use from supplemental groundwater irrigation to quasi-municipal and domestic as proposed in Application 79638, would set a precedent toward other supplemental groundwater rights that exist throughout the Carson Valley. Supplemental irrigation water rights are rights that have a place of use appurtenant to the same place of use as an existing water right and are only available for use when the underlying base water right is inadequate to meet irrigation demands. The State Engineer has previously addressed the nature of supplemental water rights in State Engineer's Ruling No. 5823.[5] In that ruling, the State Engineer was addressing protest issues that asserted that a supplemental groundwater right to Carson River surface-water rights should not be allowed to be stripped and become a stand-alone right and also that if the water sought to be changed is supplemental to a surface-water right, granting the application would in effect amount to granting a new water right in an over-appropriated basin thereby conflicting with existing rights.

In State Engineer's Ruling No. 5823, the State Engineer found merit in the protest claim and found that the protest claim warranted the consideration of the actual use of the water in relation to the actual amount of water committed for use in a groundwater basin; however, this ruling also reflects the long-standing policy that supplemental water rights are not allowed to be stripped and stand alone independently from the surface-water right and be considered a stand-alone water right for any duty, much less full duty. In Ruling No. 5823, the State Engineer addressed the Applicants' argument that since it is the policy of the State Engineer not to allow supplemental irrigation rights to be converted to municipal use (a stand-alone water right) they should not be counted in the quantification of existing rights in the basin, and should be fully

---

[3] Proof of Application of Water to Beneficial Use, File No. 18976, official records in the Office of the State Engineer.
[4] Certificate No. 5975, File No. 18976, official records in the Office of the State Engineer.
[5] State Engineer's Ruling No. 5823, dated March 18, 2008, official records in the Office of the State Engineer.

deducted from the amount of water considered committed in the basin and the Protestant's argument that the supplemental water rights should be analyzed at the full duty of 4.0 acre-feet per acre duty as indicated on the permit or certificate. Those Protestants took issue with counting supplemental water rights as a zero in the amount of water actually committed in a basin, arguing that the water is pumped, particularly in dry years, and thus, should not be discounted from the amount of water committed in the basin. The State Engineer agreed that supplemental water rights should not be fully discounted from the amount of water committed in a hydrographic basin and found that a determination needed to be made regarding the effective duty of supplemental groundwater rights in order to determine a more refined number for water committed for use in the hydrographic basin. However, there was no change in the policy that supplemental water rights cannot be converted to a stand-alone water right; they must be tied to the surface-water right.

As just noted, the State Engineer agreed that supplemental water rights should not be fully discounted from the amount of water committed in a hydrographic basin, but rather that a determination needed to be made regarding the effective duty of supplemental groundwater rights. In Ruling No. 5823, the State Engineer performed an analysis to establish an effective duty for supplemental irrigation groundwater rights for the purposes of determining total existing groundwater use in Dayton Valley and found it reasonable to assume that the effective duty of a supplemental irrigation groundwater right was neither zero nor the full duty of 4.0 acre-feet per acre as indicated on the permit or certificate. Instead, the State Engineer found that it is much more reasonable to establish the effective duty of a supplemental irrigation groundwater right as the maximum annual amount of the groundwater right actually used to supplement the surface-water right to meet irrigation demands. While the State Engineer's effective duty estimate of supplemental irrigation groundwater rights in Dayton Valley was based on actual field work, he also made a comparison to the Carson Valley looking at the timeframe of 1996 to 2005, which has surface-water rights for use of the Carson River and supplemental groundwater rights for the entire place of use of the surface-water rights. In Ruling No. 5823, the State Engineer found that the total duty of supplemental groundwater rights in the Carson Valley were used on a percentage basis that ranged from a low of 4 percent to a high of 28 percent with an average of 16.2 percent.[6]

---

[6] State Engineer's Ruling No. 5823, p. 26.

The State Engineer finds while the effective duty of supplemental groundwater rights may be a factor in the analysis of the amount of water actually pumped on an annual basis in any particular hydrographic basin, it does not change the policy that these water rights are tied to the surface-water right and are not stand-alone independent water rights that can be separated and transferred at any duty.

IV.

A review of the Carson Valley 2005 Groundwater Pumpage Inventory shows that no water was put to beneficial use under Permit 18976, Certificate 5975 for the years 2001 through 2005.[7]

V.

The State Engineer finds the water sought to be changed under Application 79638 is a supplemental water right, and as such were not granted as stand-alone water rights. They are tied to the relevant surface-water right and they are not allowed to be changed to a stand-alone water right as to do so would in effect be issuing a new appropriation in a quantity greater than the use of water under the supplemental water right.

VI.

The State Engineer has denied many applications for new appropriations of groundwater within the Carson Valley Hydrographic Basin.[8] Applications for municipal and quasi-municipal purposes have been denied on the grounds that the committed groundwater resources of the basin meet or exceed the estimated groundwater recharge. The State Engineer finds to allow this supplemental groundwater right to be converted to a stand-alone groundwater right would be in contradiction of many rulings denying other water right applications, would interfere with existing rights and threaten to prove detrimental to the public interest. Additionally, to allow this supplemental groundwater to be converted to a stand-alone groundwater right would set a precedent such that numerous basins statewide would now be severely over appropriated.

---

[7] Official Records of the Office of the State Engineer.

[8] *See,* State Engineer's Ruling No. 6033, dated March 19, 2010, official records in the Office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[9]

II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:[10]

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 granting of Application 79638 will interfere with existing rights and thereby threaten to prove detrimental to the public interest.

RULING

A portion of the protest to Application 79638 is upheld and Application 79638 is hereby denied on the grounds that the use of water as proposed as a stand-alone groundwater right will conflict with existing rights and thereby threaten to prove detrimental to the public interest. No ruling is made on the remaining protest grounds.

Respectfully submitted,

P.E.

JASON KING, P.E.
State Engineer

Dated this 16th day of September, 2010.

[9] NRS Chapters 533 and 534.
[10] NRS § 533.370(5).