

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

IN THE MATTER OF APPLICATIONS 75701,)
75702, 75703, 75704, 75705, 75706, 75707,)
75708, 75709, 75710, 75711, 75712, 75713,)
75714, 75715, 75716, 75717, 75718, 75719,)
75720, 75721, 75722, 75723 AND 75724 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
SAN EMIDIO DESERT HYDROGRAPHIC)
BASIN (22) AND THE HUALAPAI FLAT)
HYDROGRAPHIC BASIN (24) WASHOE)
COUNTY, NEVADA.)

RULING
#6085

GENERAL

I.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75701 to change the manner and place of use of 1,280 acre-feet annually (afa), a portion of the water previously appropriated under Permit 18951, Certificate 6020, within the Hualapai Flat Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the SE¼ NE¼ of Section 23, T.35N., R.23E., M.D.B.&M.¹

II.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75702 to change the manner and place of use of 640 afa, a portion of the water previously appropriated under Permit 22657, Certificate 6296, within the Hualapai Flat Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the SE¼ NE¼ of Section 23, T.35N., R.23E., M.D.B.&M.²

¹ File No. 75701, official records in the Office of the State Engineer.

² File No. 75702, official records in the Office of the State Engineer.

III.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75703 to change the manner and place of use of 632 afa, a portion of the water previously appropriated under Permit 22658, Certificate 6297, within the Hualapai Flat Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the NW¼ SE¼ of Section 26, T.35N., R.23E., M.D.B.&M.³

IV.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75704 to change the manner and place of use of 1,280 afa, a portion of the water previously appropriated under Permit 22659, Certificate 6298, within the Hualapai Flat Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the NW¼ NE¼ of Section 26, T.35N., R.23E., M.D.B.&M.⁴

V.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75705 to change the manner and place of use of 1,008 afa, a portion of the water previously appropriated under Permit 28087, Certificate 8434, within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the SE¼ SE¼ of Section 25, T.30N., R.22E., M.D.B.&M.⁵

VI.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75706 to change the manner and place of use of 756 afa, a portion of the water previously appropriated under Permit 28088, Certificate 8435, within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the

³ File No. 75703, official records in the Office of the State Engineer.

⁴ File No. 75704, official records in the Office of the State Engineer.

⁵ File No. 75705, official records in the Office of the State Engineer.

Dayton Area. The point of diversion is unchanged and is described as being located within the NW¼ SE¼ of Section 13, T.30N., R.22E., M.D.B.&M.⁶

VII.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75707 to change the manner and place of use of 252 afa, a portion of the water previously appropriated under Permit 29143, Certificate 10666, within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the NW¼ SE¼ of Section 13, T.30N., R.22E., M.D.B.&M.⁷

VIII.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75708 to change the manner and place of use of 252 afa, a portion of the water previously appropriated under Permit 30898, Certificate 10671, within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the SW¼ SE¼ of Section 24, T.30N., R.22E., M.D.B.&M.⁸

IX.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75709 to change the point of diversion, manner and place of use of 34 afa, a portion of the water previously appropriated under Permit 65337, within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the NW¼ SE¼ of Section 13, T.30N., R.22E., M.D.B.&M.⁹

X.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75710 to change the point of diversion, manner and place of use of 276 afa of the water previously appropriated under Permit 68755 within the San Emidio Desert Hydrographic

⁶ File No. 75706, official records in the Office of the State Engineer.

⁷ File No. 75707, official records in the Office of the State Engineer.

⁸ File No. 75708, official records in the Office of the State Engineer.

⁹ File No. 75709, official records in the Office of the State Engineer.

Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The proposed point of diversion is described as being located within Lot 10 of Section 1, T.30N., R.22E., M.D.B.&M.¹⁰

XI.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75711 to change the point of diversion, manner and place of use of 194 afa, a portion of the water previously appropriated under Permit 26963, Certificate 8432, within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The proposed point of diversion is described as being located within Lot 10 of Section 1, T.30N., R.22E., M.D.B.&M.¹¹

XII.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75712 to change the point of diversion, manner and place of use of 34 afa of the water previously appropriated under Permit 70991 within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The proposed point of diversion is described as being located within Lot 10 of Section 1, T.30N., R.22E., M.D.B.&M.¹²

XIII.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75713 to change the manner and place of use of 68 afa of the water previously appropriated under Application 74725 (now Permit 74725) within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the SW¼ SE¼ of Section 24, T.30N., R.22E., M.D.B.&M.¹³

¹⁰ File No. 75710, official records in the Office of the State Engineer.

¹¹ File No. 75711, official records in the Office of the State Engineer.

¹² File No. 75712, official records in the Office of the State Engineer.

¹³ File No. 75713, official records in the Office of the State Engineer.

XIV.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75714 to change the manner and place of use of 1,076 afa of the water previously appropriated under Application 74726 (now Permit 74726) within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the SW¼ SE¼ of Section 24, T.30N., R.22E., M.D.B.&M.¹⁴

XV.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75715 to change the manner and place of use of 272 afa of the water previously appropriated under Application 74727 (now Permit 74727) within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the SE¼ SE¼ of Section 25, T.30N., R.22E., M.D.B.&M.¹⁵

XVI.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75716 to change the manner and place of use of 68 afa of the water previously appropriated under Application 74728 (now Permit 74728) within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the SE¼ SE¼ of Section 25, T.30N., R.22E., M.D.B.&M.¹⁶

XVII.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75717 to change the manner and place of use of 204 afa of the water previously appropriated under Application 74729 (now Permit 74729) within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the

¹⁴ File No. 75714, official records in the Office of the State Engineer.

¹⁵ File No. 75715, official records in the Office of the State Engineer.

¹⁶ File No. 75716, official records in the Office of the State Engineer.

Dayton Area. The point of diversion is unchanged and is described as being located within the SE¼ SE¼ of Section 25, T.30N., R.22E., M.D.B.&M.¹⁷

XVIII.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75718 to change the manner and place of use of 68 afa of the water previously appropriated under Application 74730 (now Permit 74730) within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the NW¼ SE¼ of Section 13, T.30N., R.22E., M.D.B.&M.¹⁸

XIX.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75719 to change the manner and place of use of 68 afa of the water previously appropriated under Application 74731 (now Permit 74731) within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the NW¼ SE¼ of Section 13, T.30N., R.22E., M.D.B.&M.¹⁹

XX.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75720 to change the manner and place of use of 68 afa of the water previously appropriated under Application 74732 (now Permit 74732) within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the NW¼ SE¼ of Section 13, T.30N., R.22E., M.D.B.&M.²⁰

XXI.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75721 to change the manner and place of use of 68 afa of the water previously appropriated under Application 74733 (now Permit 74733) within the San Emidio Desert

¹⁷ File No. 75717, official records in the Office of the State Engineer.

¹⁸ File No. 75718, official records in the Office of the State Engineer.

¹⁹ File No. 75719, official records in the Office of the State Engineer.

²⁰ File No. 75720, official records in the Office of the State Engineer.

Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the SE¼ SE¼ of Section 25, T.30N., R.22E., M.D.B.&M.²¹

XXII.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75722 to change the manner and place of use of 252 afa of the water previously appropriated under Application 74734 (now Permit 74734) within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the SW¼ SE¼ of Section 24, T.30N., R.22E., M.D.B.&M.²²

XXIII.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75723 to change the manner and place of use of 68 afa of the water previously appropriated under Application 74735 (now Permit 74735) within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the SE¼ SE¼ of Section 25, T.30N., R.22E., M.D.B.&M.²³

XXIV.

On May 15, 2007, Sonterra Development Company, LLC, filed Application 75724 to change the manner and place of use of 824 afa of the water previously appropriated under Application 74736 (now Permit 74736) within the San Emidio Desert Hydrographic Basin for municipal purposes with proposed places of use being described as being within the Fernley Area, Storey County, Silver Springs, Stagecoach Area and the Dayton Area. The point of diversion is unchanged and is described as being located within the SE¼ SE¼ of Section 25, T.30N., R.22E., M.D.B.&M.²⁴

²¹ File No. 75721, official records in the Office of the State Engineer.

²² File No. 75722, official records in the Office of the State Engineer.

²³ File No. 75723, official records in the Office of the State Engineer.

²⁴ File No. 75724, official records in the Office of the State Engineer.

XXV.

Applications 75701 through 75704 were timely protested by the Gerlach General Improvement District, Washoe County, Bright Holland Corporation, Fascio Enterprises, United States Department of Interior, Bureau of Land Management, Jackson Family Partnership, and Toiyabe Chapter of Sierra Club and Great Basin Water Network on grounds not to be considered in this ruling.¹⁻⁴

XXVI.

Applications 75705 through 75724 were timely protested by Washoe County, United States Department of Interior, Bureau of Land Management, Toiyabe Chapter of Sierra Club and Great Basin Water Network and Pyramid Lake Paiute Tribe of Indians on grounds not to be considered in this ruling.⁵⁻²⁴

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 Nevada. The State Engineer finds that in the case of Applications 75701 through 75724, inclusive, 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 October 8, 2007, the Applicant requested the State Engineer to postpone any hearing or action on these applications indicating that the Applicant was in the process of collecting information necessary to support the change applications. The Applicant indicated it was working on analysis of crop consumption, groundwater discharge estimates, updating precipitation data, updating groundwater recharge estimates and refinement of numerical groundwater models developed for the project. By letter dated January 6, 2009, the State Engineer noted that it had been more than a year since that request and no additional information had been provided by the Applicant in support of its applications. The State Engineer requested the Applicant to provide additional information in support of its applications within 120 days of the date of the January 6, 2009, letter.

By letter dated February 4, 2009, the Applicant indicated that it was still pursuing the applications, had meet with then Deputy State Engineer Jason King wherein it informed Mr. King that additional work was needed on issues such as consumptive use and perennial yields of the basins of origin. The Applicant noted that the original place of use covered a very large area and would reduce it by letter filed later. The Applicant then requested the State Engineer to delay action on the applications for an additional 180 days.

By letter dated November 25, 2009, the State Engineer indicated that the 180-day time period had expired in July 2009 and that to date the Applicant had not provided a response to the questions raised in the State Engineer's letter of January 6, 2009. By letter dated December 24, 2009, the Applicant indicated that it was still interested in pursuing the applications, but that many issues still remained to be addressed, the biggest factor being the state of the national economy. The Applicant indicated that this single factor has overshadowed land development, which has gutted the housing market and halted growth in Fernley, which is the main remaining proposed place of use under these applications.

The State Engineer finds the Applicant has yet to demonstrate a specific project where the water applied for under these applications would be used. The State Engineer finds that for more than three years the Applicant has been requested to provide additional information regarding various aspects of its project and the Applicant has failed to provide that information.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²⁵

II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:²⁶

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

²⁵ NRS Chapters 533 and 534.

²⁶ NRS § 533.370(5).

- 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.

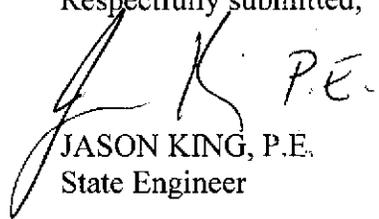
Nevada Revised Statute § 533.035 provides that beneficial use shall be the basis, the measure and the limit of the right to the use of water. Nevada Revised Statute § 533.060 provides that the right to use water must be limited and restricted to as much as may be necessary when reasonably and economically 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 concludes the Applicant has not been able to demonstrate a beneficial use as applied for under these change applications, has not demonstrated the amount of water that may be necessary, has not demonstrated the approximate number of persons to be served or the approximate future requirement, and has not provided satisfactory proof of a good faith intention to construct the works and to apply the water to the intended beneficial use with reasonable diligence. The State Engineer concludes under these circumstances the applications are subject to denial and to issue permits under these circumstances would threaten to prove detrimental to the public interest.

RULING

Applications 75701, 75702, 75703, 75704, 75705, 75706, 75707, 75708, 75709, 75710, 75711, 75712, 75713, 75714, 75715, 75716, 75717, 75718, 75719, 75720, 75721, 75722, 75723 and 75724 are hereby denied on the grounds that the Applicant has not met many statutory criterion and to issue permits under these circumstances would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. King P.E.', is written over the typed name. The signature is stylized and cursive.

JASON KING, P.E.
State Engineer

Dated this 17th day of
December, 2010.