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

IN THE MATTER OF APPLICATION 79637 FILED TO APPROPRIATE THE PUBLIC WATERS OF AN UNDERGROUND SOURCE WITHIN THE LAKE VALLEY HYDROGRAPHIC BASIN (183), LINCOLN COUNTY, NEVADA.	)	**RULING** **#6087**

GENERAL

I.

Application 79637 was filed on February 22, 2010, by Tuffy Ranch Properties, LLC, to appropriate 1.5 cubic feet per second, not to exceed 504 acre-feet annually, from an underground source within the Lake Valley Hydrographic Basin, for the irrigation of 126.0 acres within the S½ SW¼ of Section 15, SE¼ SE¼ of Section 16, E½ E½ of Section 21, W½, SE¼, W½ NE¼ of Section 22, N½ of Section 27, E½ NE¼ of Section 28, T.6N., R.66E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 27, T.6N., R.66E., M.D.B.&M.[1]

II.

Application 79637 was timely protested by the U.S. Fish and Wildlife Service on the following grounds:[1]

> Application Nos. 79637 [*sic*] were filed by Tuffy Ranch Properties LCC [*sic*] on February 22, 2010 requesting a combined diversion rate of 1.5 cubic feet per second (1,086 ac-ft annually) from an underground source in Lake Valley, groundwater basin 183. The purpose of the proposed applications is irrigation use. Basin 183 is part of the Great Salt Lake Regional Groundwater Flow System. The proposed groundwater well has the potential to affect one candidate species, the greater sage-grouse (*Centrocercus urophasianus)* and two petitioned species, the northern leopard frog (*Rana pipien*) and Lake Valley pyrg (*P. sublata*) and their habitats in the basin.

---

[1] File No. 79637, official records of the Office of the State Engineer.

The U.S. Fish and Wildlife Service (Service) requests that Application Nos. 79637 be denied because:

1. Water is not available to appropriate in the manner described.
2. Granting of these applications will threaten or damage habitat for species that are endangered, threatened, or considered for future listing under the Endangered Species Act and, therefore, is not in the public interest.

The total amount of water sought by the applications may exceed the quantity of unappropriated water available in Basin 183, depending on the volume of available water and appropriated water as determined by the State Engineer.

The proposed groundwater development is not in the public interest. The impacts from the proposed diversions will eventually and inevitably impact biological resources and endangered species endangered species, [*sic*] and sensitive habitats in Lake Valley and other locations within the Great Salt Lake Groundwater Flow System.

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 sufficient evidence exists within the records of the Office of the State Engineer and a hearing is not necessary to consider the merits of the protest.

II.

The Applicant is the owner of the Atlanta Farms property within the Lake Valley Hydrographic Basin. Around March 4, 2005, the Applicant filed change Applications 72296 through 72349 (Change Applications) to convert the water from agricultural use to municipal purposes. The Applicant intends to sell the water rights to Coyote Springs Investment who in turn will dedicate the water to the Lincoln County General Improvement District for water service to the proposed Coyote Springs Development. The Change Applications were conditionally approved by the State Engineer on December 3, 2008.[2,3]

---

[2] State Engineer's Ruling No. 5918, December 3, 2008, official records in the Office of the State Engineer.

[3] *Note*, Applications 72326, 72327, 72328, 72340, 72341, 72342, 72343, 72344 and 72345 were denied by State Engineer's Ruling No. 5918 and the remaining applications within the series were conditionally approved.

State Engineer's Ruling No. 5918 requires the Applicant to collect a minimum of five years of hydrologic data prior to the export of any groundwater from the Lake Valley Hydrographic Basin. In order to continue to irrigate the Atlanta Farms property and collect the required hydrologic data, the Applicant has filed Applications 79104 through 79131 as supplemental applications that will cease as the staged development and export of water begins under the Change Applications. Subsequent to the filing of supplemental Applications 79104 through 79131, the Applicant discovered that these filings were insufficient to allow continued irrigation from the Atlanta Farms Well 10, a well that has been in production at Atlanta Farms since the early to mid – 1960s. Application 79637 is filed to correct the deficiency at Atlanta Farms Well 10 and, similar to Applications 79104 through 79131, is filed as a supplemental application that will cease as the staged development and export of water begins under the Change Applications.[4]

It should be noted that at this time the Change Applications have not been issued permits. Once permits are issued on the Change Applications, the base water rights that allow for irrigation at Atlanta Farms will be abrogated and use of water for irrigation purposes will no longer be allowed. The purpose of Applications 79104 through 79131 and protested Application 79637 is to allow for continuation of historic irrigation practices at the Atlanta Farms after permits are issued on the Change Applications. It is intended that Applications 79104 and 79131 and protested Application 79637 be issued simultaneous to the Change Applications approved under State Engineer's Ruling No. 5918, to prevent any disruption to the irrigation season. Applications 79104 through 79131 and protested Application 79637 would be considered supplemental to the Change Applications and as staged development of the exported water occurs, the supplemental permits would expire or otherwise cease. At no time will the supplemental applications result in a new or additional demand on the groundwater resource.

The State Engineer finds that Application 79637 is filed as a supplemental water right to continue the historic irrigation at the Atlanta Farms property. The State Engineer finds that the water under Application 79637 has already been accounted for in the groundwater basin budget and will have no additional effect on the groundwater resource.

---

[4] Response to Protest, June 14, 2010, File No. 79637, official records in the Office of the State Engineer.

III.

The protest indicates that the total amount of water sought by the applications may exceed the quantity of unappropriated water available in the Lake Valley Hydrographic Basin, depending on the volume of available water and appropriated water as determined by the State Engineer. The protest further states that the application should be denied because water is not available to appropriate in the manner described and the granting of the application will threaten or damage habitat for species that are endangered, threatened, or considered for future listing under the Endangered Species Act, and therefore is not in the public interest. The State Engineer finds that the application was filed to continue irrigation at the Atlanta Farms property and that the application is not requesting a new appropriation of groundwater from the Lake Valley Hydrographic Basin.

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 an application 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 agricultural property at Atlanta Farms was irrigated under existing water right permits and certificates prior to filing the Change Applications to export the water for municipal use. Applications 79104 through 79131 and protested Application 79637 were filed to allow for

---

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

continued irrigation for a period of time necessary to collect hydrologic data and to ultimately prepare for the export of this water for municipal use under the Change Applications.

The State Engineer concludes that Application 79637 is not a new appropriation of water, but was filed to continue current irrigation practices at the Atlanta Farms Well 10; therefore, the protest may be overruled. The State Engineer concludes that Application 79637 will not conflict with existing rights, protectible interests in domestic wells or threaten to prove detrimental to the public interest.

RULING

The protest to Application 79637 is overruled and Application 79637 is hereby approved subject to:

1. Existing rights;
2. State Engineer's Ruling No. 5918;
3. Expiration upon the water being dedicated to a project at Coyote Springs or delivered to a pipeline for export from the basin, whichever occurs first; and
4. Payment of the statutory permit fees.

Respectfully submitted,

J. K. P.E.

JASON KING, P.E.
State Engineer

Dated this 30th day of
December, 2010.