

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

IN THE MATTER OF APPLICATIONS 78919)
AND 78920 FILED TO CHANGE THE POINT)
OF DIVERSION OF A PORTION OF THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE PREVIOUSLY APPROPRIATED)
UNDER PERMITS 65702 AND 65704,)
RESPECTIVELY, AND APPLICATION 78921)
FILED TO CHANGE THE POINT OF)
DIVERSION OF THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 71535)
WITHIN THE PANACA VALLEY AREA)
HYDROGRAPHIC BASIN (203), LINCOLN)
COUNTY, NEVADA.)

RULING
#6091

GENERAL

I.

Application 78919 was filed on September 24, 2009, by Turner Lincoln Ranch, LLC, to change the point of diversion of 0.407 cubic feet per second (cfs), a portion of the underground water previously appropriated under Permit 65702 in the Panaca Valley Hydrographic Basin, for irrigation purposes from January 1 through December 31 of each year. The existing and proposed place of use is described as being located within the N $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13 NW $\frac{1}{4}$ of Section 24, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T.2S., R.67E., M.D.B.&M. The existing point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T.2S., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.2S., R.67E., M.D.B.&M.¹

II.

Application 78920 was filed on September 24, 2009, by Turner Lincoln Ranch, LLC, to change the point of diversion of 1.598 cfs, a portion of the underground water previously appropriated under Permit 65704 in the Panaca Valley Hydrographic Basin, for irrigation purposes from January 1 through December 31 of each year. The existing and proposed place of use is described as being located within the N $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$, E $\frac{1}{2}$

¹ File No. 78919, official records in the Office of the State Engineer.

SE $\frac{1}{4}$ of Section 14, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, NW $\frac{1}{4}$ of Section 24, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T.2S., R.67E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T.2S., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.2S., R.67E., M.D.B.&M.²

III.

Application 78921 was filed on September 24, 2009, by Turner Lincoln Ranch, LLC, to change the point of diversion of 1.50 cfs of the underground water previously appropriated under Permit 71535 in the Panaca Valley Hydrographic Basin for irrigation purposes from January 1 through December 31 of each year. The existing and proposed place of use is described as being located within the N $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, NW $\frac{1}{4}$ of Section 24, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T.2S., R.67E., M.D.B.&M. The existing point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.2S., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.2S., R.67E., M.D.B.&M.³

IV.

Applications 78919, 78920 and 78921 were timely protested by Raymond Thompson, on the grounds that:^{1,2,3}

1. There is no unappropriated water available to support the applications.
2. The applications do not state that they change the place of use of the base rights.
3. A portion of the place of use is outside of the place of use described in the applications. This portion of land is outside of the control of the Applicant and therefore the Applicant cannot demonstrate the ability to place the water to beneficial use.
4. Areas of irrigation described by the map submitted in support of the applications are not the same areas described on the map in support of the permits that form the basis of the applications. Areas described within the place of use described on the map in support of the applications do not correspond to actual areas irrigated within the described place of use.

² File No. 78920, official records in the Office of the State Engineer.

³ File No. 78921, official records in the Office of the State Engineer.

5. Moving water from three different points of diversion and to one concentrated point of diversion may impact senior water rights.
6. Granting Applications 78919, 78920 and 78921 would be detrimental to public interest.

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 Applications 78919, 78920 and 78921 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.

On May 26, 2008, the Division of Water Resources (Division) received additional information from an agent for the Applicant in response to the protests to Applications 78919, 78920 and 78921.¹ The response to the protests includes a letter answering various points listed in the protest and an exhibit map addressing allegations in the protests.

Applications 78919, 78920 and 78921 were protested in part on the grounds that the proposed appropriation of 2,375 acre-feet of water would adversely affect the Protestant's irrigation wells. Every permit issued by the State Engineer is conditioned with a set of permit terms, which govern the appropriation of water. Among the terms applied to underground permits is the condition that the approval of the permit will allow for a reasonable lowering of the static water level. The State Engineer has determined that the Protestant's closest point of diversion is separated from the Applicant's existing points of diversion by approximately 6,000 feet and from the Applicant's proposed point of diversion by a distance of approximately 3,600 feet. On September 30, 2010, Division personnel reviewed available data within the vicinity of the proposed change applications and conducted analysis to evaluate the Protestant's concern. Available data included well log records, historic water levels, pump tests, local geology and associated measured or computed aquifer properties. Potential drawdown at the Protestant's closest well was

estimated by comparing impacts of pumpage at the proposed new point of diversion (Jeans Well) with impacts of pumpage at the three wells formerly used by the Applicant. It was assumed that the total annual duty of 2,375 acre feet would be continuously pumped over a time period ranging from 1 year, 10 years and 100 years. The level of draw down was then calculated at a radius of 3,600 feet versus 6,000 feet. The conclusion of the analysis is that water level changes at the Protestant's nearest well will be slight and within a reasonable degree of impact to local static water levels. This analysis centers only upon the effects generated by the Applicant's well and does not take into account additional stress to the groundwater basin produced by existing domestic and permitted wells currently pumping in the study area. Based upon the results of this analysis, the State Engineer finds that the approval of Applications 78919, 78920 and 78921 would not cause water level declines, which would be considered above and beyond a reasonable level.

III.

Applications 78919, 78920 and 78921 were protested in part on the grounds that there is no unappropriated water available to support the applications. The State Engineer finds that the approval of Applications 78919, 78920 and 78921 would not create new appropriations of irrigation water from the Panaca Valley Hydrographic Basin. Appropriations of water are currently permitted under the permits that form the basis for change Applications 78919, 78920 and 78921.

IV.

Applications 78919, 78920 and 78921 are protested in part on the grounds that they do not state that they are changing the place of use of the permits that form the basis of the applications. The State Engineer finds that the place of use of Applications 78919, 78920 and 78921 is the same as the permits that form the basis of the applications and that no change of place of use occurs.

V.

Applications 78919, 78920 and 78921 are protested in part on the grounds that areas of irrigation described by the map submitted in support of the applications are not the same areas described on the map in support of the permits that form the basis of the applications. Also, areas described within the place of use described on the map in support of the applications do not correspond to actual areas irrigated within the

described place of use. Beneficial use shall be the basis, the measure and the limit of the right to the use of water.⁴ The State Engineer finds that the permits that form the basis of Applications 78919, 78920 and 78921 have not yet been placed to beneficial use. The terms of the permits allow the Applicant to irrigate 475.04 acres within the described place of use. The permits that form the basis of applications 78919, 78920 and 78921 have the same described place of use as Applications 78919, 78920 and 78921 and will be limited to the irrigation of 475.04 acres within that place of use.

VI.

Applications 78919, 78920 and 78921 are protested in part on the grounds that the Applicant cannot prove beneficial use of the applications because the Applicant does not have control over a portion of the place of use. The Protestant asserts that land in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T.2S., R.67E., M.D.B.&M., is on United States Department of the Interior, Bureau of Land Management (BLM) land that is within the grazing lease agreement between the BLM and the protestant. The State Engineer finds that land irrigated in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T.2S., R.67E., M.D.B.&M. is not a part of the place of use of Applications 78919, 78920 and 78921. Every permit that is issued by the State Engineer contains a set of conditions that establishes the guidelines under which the appropriation of water can occur. Those permits that are issued for appropriations of underground water often are conditioned with the provision that the approval of the permit does not waive any requirements that may be imposed by state and federal agencies. The Applicant has informed this office that he is in the process of obtaining permits from the BLM to irrigate land in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T.2S., R.67E., M.D.B.&M. The Applicant must file an application to change the place of use of Applications 78919, 78920 and 78921 if he desires to use water under these applications to irrigate the land in question.

CONCLUSIONS

I.

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

⁴ NRS § 533.035

⁵ NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public water 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 protectable 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 existing water right applications under which the water is sought for change is in good standing and the filing of change applications on these existing rights are allowed by Nevada water law.⁷

IV.

Applications 78919, 78920 and 78921 if approved would transfer 2,375 acre-feet of underground water to an existing point of diversion within 3,600 feet from the closest of the Protestant's irrigation wells. The potential drawdown effect that this amount of pumpage would have on the protestant's irrigation wells was evaluated by employing a standard analytical method. This analysis indicated that the approval of the subject change applications would have a reasonable degree of impact upon the Protestant's irrigation wells. The State Engineer concludes that the issuance of a water right permit derived from Applications 78919, 78920 and 78921 would not threaten to prove detrimental to the public interest.

V.

The State Engineer finds that Applications 78919, 78920 and 78921 will be approved with the condition that the Applicant will not be released from any obligations that are required from state and federal agencies.

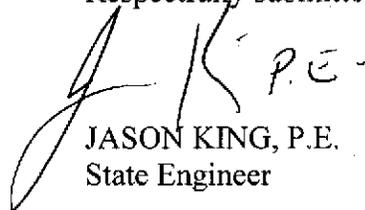
⁶ NRS § 533.370(5).

⁷ NRS § 533.040(2).

RULING

The protests are overruled and Applications 78919, 78920 and 78921 are hereby approved for irrigation purposes not to exceed a total combined duty of 2,375 acre-feet annually subject to existing rights, the payment of the statutory permit fees and the assignment of title into the Applicant's name of those portions of Permits 65702, 65704 and 71535.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 15th day of
February, 2011.