

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

IN THE MATTER OF APPLICATIONS 80201,)
80202, AND 80203 FILED TO CHANGE THE)
POINT OF DIVERSION, PLACE OF USE, AND)
MANNER OF USE OF THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE WITHIN)
THE GOSHUTE VALLEY HYDROGRAPHIC)
BASIN (187), ELKO COUNTY, NEVADA.)

RULING

#6106

GENERAL

I.

Application 80201 was filed on October 12, 2010, by Wendover Project, LLC and The Star Living Trust to change the point of diversion, place of use, and manner of use of 0.75 cubic feet per second (cfs), not to exceed 240 acre-feet annually (afa), of underground water previously appropriated under Permit 58145. The proposed manner of use is for municipal purposes. The proposed place of use is described as being all of Sections 1 and 2, T.32N., R.69E., the NW $\frac{1}{4}$ NW $\frac{1}{4}$, a portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 6, T.32N., R.70E., all of Sections 1, 12, 25, 35, and 36, and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 26, T.33N., R.69E., all of Sections 7, 8, 9, 10, 15, 16, 17, 18, and 19, the NW $\frac{1}{4}$, the NW $\frac{1}{4}$ NE $\frac{1}{4}$, a portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ lying west of Highway Alternate 93, the N $\frac{1}{2}$ SW $\frac{1}{4}$, the SW $\frac{1}{4}$ SW $\frac{1}{4}$, a portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 20, a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 21, a portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 29, the N $\frac{1}{2}$, the SW $\frac{1}{4}$, the W $\frac{1}{2}$ SE $\frac{1}{4}$, a portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 30, the NW $\frac{1}{4}$, the W $\frac{1}{2}$ SW $\frac{1}{4}$, a portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 31, T.33N., R.70E., M.D.B.&M.

The existing manner and place of use is described as being for irrigation purposes on 3,441.24 acres within the W $\frac{1}{2}$ of Section 2, W $\frac{1}{3}$ of Section 3, S $\frac{1}{2}$ of Section 22, all of Sections 23, 25, W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 26, all of Section 27, SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, E $\frac{1}{2}$ of Section 33, and all of Sections 34 and 35, T.35N., R.66E., M.D.B.&M.

The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.35N., R.68E., M.D.B.&M.¹

II.

Application 80202 was filed on October 12, 2010, by Wendover Project, LLC and The Star Living Trust to change the point of diversion, place of use, and manner of use of 2.7 cfs, not to exceed 640 afa, of underground water previously appropriated under Permit 58147. The proposed manner of use is for municipal purposes. The proposed place of use is described as being located within all of Sections 1 and 2, T.32N., R.69E., the NW $\frac{1}{4}$ NW $\frac{1}{4}$, a portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 6, T.32N., R.70E., all of Sections 1, 12, 25, 35, and 36, and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 26, T.33N., R.69E., all of Sections 7, 8, 9, 10, 15, 16, 17, 18, and 19, the NW $\frac{1}{4}$, the NW $\frac{1}{4}$ NE $\frac{1}{4}$, a portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ lying west of Highway Alternate 93, the N $\frac{1}{2}$ SW $\frac{1}{4}$, the SW $\frac{1}{4}$ SW $\frac{1}{4}$, a portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 20, a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 21, a portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 29, the N $\frac{1}{2}$, the SW $\frac{1}{4}$, the W $\frac{1}{2}$ SE $\frac{1}{4}$, a portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 30, the NW $\frac{1}{4}$, the W $\frac{1}{2}$ SW $\frac{1}{4}$, a portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 31, T.33N., R.70 E., M.D.B.&M.

The existing manner and place of use is described as being for irrigation purposes on 3,441.24 acres of land within the W $\frac{1}{2}$ of Section 2, E $\frac{1}{3}$ of Section 3, S $\frac{1}{2}$ of Section 22, all of Sections 23, 25, W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 26, all of Section 27, SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, E $\frac{1}{2}$ of Section 33, and all of Sections 34 and 35, T.35N., R.66E., M.D.B.&M.

¹ File No. 80201, official records in the Office of the State Engineer.

The point of diversion is described as being located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.35N., R.68E., M.D.B.&M.²

III.

Application 80203 was filed on October 12, 2010, by Wendover Project, LLC and The Star Living Trust to change the point of diversion, place of use, and manner of use of 2.37 cfs, not to exceed 560 afa, of underground water previously appropriated under Permit 77360. The proposed manner of use is for municipal purposes. The proposed place of use is described as being located within all of Sections 1 and 2 of T.32N., R.69E., the NW $\frac{1}{4}$ NW $\frac{1}{4}$, a portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 6, T.32 N., R.70 E., all of Sections 1, 12, 25, 35, and 36, and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 26, T.33N., R.69E., all of Sections 7, 8, 9, 10, 15, 16, 17, 18, and 19, the NW $\frac{1}{4}$, the NW $\frac{1}{4}$ NE $\frac{1}{4}$, a portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ lying west of Highway Alternate 93, the N $\frac{1}{2}$ SW $\frac{1}{4}$, the SW $\frac{1}{4}$ SW $\frac{1}{4}$, a portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 20, a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 21, a portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 29, the N $\frac{1}{2}$, the SW $\frac{1}{4}$, the W $\frac{1}{2}$ SE $\frac{1}{4}$, a portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 30, the NW $\frac{1}{4}$, the W $\frac{1}{2}$ SW $\frac{1}{4}$, a portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$ lying west of Highway Alternate 93, a portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ lying west of Highway Alternate 93, of Section 31, T.33N., R.70E., M.D.B.&M.

The existing manner and place of use is described as being for irrigation purposes on 3,441.24 acres of land within the W $\frac{1}{2}$ of Section 2, E $\frac{1}{2}$ of Section 3, S $\frac{1}{2}$ of Section 22, all of Sections 23, 25, W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 26, all of Section 27, SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, E $\frac{1}{2}$ of Section 33, and all of Sections 34 and 35, T.35N., R.66E., M.D.B.&M.

The point of diversion is described as being located in Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 7, T.35N., R.68E., M.D.B.&M.³

² File No. 80202, official records in the Office of the State Engineer.

³ File No. 80203, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Application 58145 was filed on September 29, 1992, to change the place of use of 0.75 cfs, a portion of underground water previously appropriated under Permit 35898 in the Goshute Valley Hydrographic Basin. Amended Permit 58145 was issued on July 24, 2009, under the condition that it be subject to the same terms and conditions imposed in Permit 35898.⁴

II.

Application 58147 was filed on September 29, 1992, to change the place of use of 2.7 cfs of underground water previously appropriated under Permit 39112 in the Goshute Valley Hydrographic Basin. Amended Permit 58147 was issued on July 24, 2009, under the condition that it be subject to the same terms and conditions imposed in Permit 39112.⁵

III.

Application 58146 was filed on September 29, 1992, to change the place of use of 2.37 cfs of underground water previously appropriated under Permit 39111 in the Goshute Valley Hydrographic Basin. Amended Permit 58146 was issued on July 24, 2009, under the condition that it be subject to the same terms and conditions imposed in Permit 39111.⁶

IV.

Application 35898 was filed on September 20, 1978, to appropriate 4.0 cfs of underground water for irrigation purposes from the Goshute Valley Hydrographic Basin. Permit 35898 was issued on December 20, 1979, under the condition that the waters are to be co-mingled with the waters of the other rights of the Applicant and that the amount of water put to beneficial use shall not exceed 4.0 acre-feet per acre from any and all sources.⁷

V.

Application 39112 was filed on September 24, 1979, to appropriate 2.7 cfs of underground water for irrigation purposes from the Goshute Valley Hydrographic Basin. Permit 39112 was issued on August 6, 1984, under the condition that the waters are to be used to supplement existing surface water and that the amount of water put to beneficial use shall not exceed 4.0 acre-feet per acre from any and all sources.⁸

⁴ File No. 58145, official records in the Office of the State Engineer.

⁵ File No. 58147, official records in the Office of the State Engineer.

⁶ File No. 58146, official records in the Office of the State Engineer.

⁷ File No. 35898, official records in the Office of the State Engineer.

⁸ File No. 39111, official records in the Office of the State Engineer.

VI.

Application 39111 was filed on September 24, 1979, to appropriate 2.7 cfs of underground water for irrigation purposes from the Goshute Valley Hydrographic Basin. Permit 39111 was issued for 2.37 cfs on August 6, 1984, under the condition that the waters are to be used to supplement existing surface water and that the amount of water put to beneficial use shall not exceed 4.0 acre-feet per acre from any and all sources.⁹

VII.

Permits 58145, 58146, and 58147 were issued as supplementary to existing surface water rights. Supplemental underground rights are primarily issued for the purpose of insuring that irrigated land can receive its full duty of water when surface water rights cannot be satisfied due to some circumstance that is out of the control of the farmer, such as drought. In a normal water year, it is expected that the supplemental underground right would not be utilized and only a portion of the right would be utilized in a drought year. The supplemental underground right is tied to the surface water on the existing place of use. Under most circumstances, the supplemental underground water cannot be changed without a corresponding change in the surface water, i.e. both the surface water and underground water must move together or, in some circumstances, the surface water may be moved if the underlying supplemental underground water is withdrawn.

In this case, the Applicant has proposed to sever the supplemental underground water from the surface water on the existing place of use to utilize the underground water for municipal purposes within the West Wendover, Nevada and Wendover, Utah service area. The State Engineer finds that if Applications 80201, 80202, and 80203 were to be approved, it would create an improper use of a supplemental underground right that would result in an additional withdrawal of underground water from the Goshute Valley Hydrographic Basin aquifer that would not otherwise occur, thus creating a de facto water appropriation of 1,440 afa.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁰

⁹ File No. 39112, official records in the Office of the State Engineer.

¹⁰ NRS Chapters 533 and 534.

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.¹¹

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:¹²

- 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.

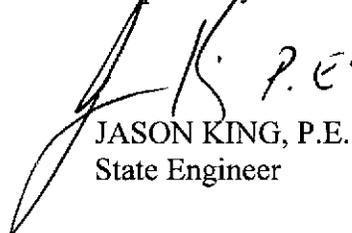
IV.

If approved, Applications 80201, 80202, and 80203 would sever a supplemental underground right from its overlying surface water and would improperly change the character of the supplemental groundwater right. The State Engineer concludes approval of Applications 80201, 80202, and 80203 would conflict with existing rights and would threaten to prove detrimental to the public interest.

RULING

Applications 80201, 80202, and 80203 are hereby denied on the grounds their issuance would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 17th day of
March, 2011.

¹¹ NRS § 533.375.

¹² NRS § 533.370(5).