

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

IN THE MATTER OF APPLICATIONS 79712,)
79719, 79720, 79721, 79722, 79723, 79724 AND)
79725 FILED TO CHANGE THE POINT OF)
DIVERSION, PLACE OF USE AND MANNER)
OF USE OF THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE)
SPRING VALLEY HYDROGRAPHIC BASIN)
(184), WHITE PINE COUNTY, NEVADA.)

RULING

#6107

GENERAL

I.

Application 79712 was filed on March 22, 2010, by the Southern Nevada Water Authority to change the point of diversion and place of use of 1.38 cubic feet per second (cfs) or 921.12 acre-feet annually (afa), from an underground source, a portion of water heretofore appropriated under Permit 29219, Certificate 8875. The proposed and existing manner of use is for irrigation and domestic purposes. The proposed use will be from January 1 to December 31 of each year. The proposed place of use is described as being located within the NW¼ of Section 26, E½ and the E½ NW¼ of Section 27 and the NE¼ of Section 34 all in T.13N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 26, T.13N., R.67E., M.D.B.&M.¹

II.

Application 79719 was filed on March 25, 2010, by the Southern Nevada Water Authority to change the point of diversion, place and manner of use of 0.99 cfs or 362.124 afa from an underground source, a portion of water heretofore appropriated under Permit 63533. The proposed and existing manner of use is for irrigation and domestic purposes. The proposed manner of use is for irrigation and domestic purposes from January 1 to December 31 of each year and the existing manner of use is for irrigation and domestic purposes from April 1 to October 1 of each year. The proposed place of use is described as being located within the NW¼ of Section 26, E½ and the E½ NW¼ of Section 27 and the NE¼ of Section 34 all in T.13N., R.67E., M.D.B.&M. The

¹ File No. 79712, official records in the Office of the State Engineer.

proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.13N., R.67E., M.D.B.&M.²

III.

Application 79720 was filed on March 25, 2010, by the Southern Nevada Water Authority to change the point of diversion, place and manner of use of 0.99 cfs or 362.124 afa from an underground source, a portion of water heretofore appropriated under Permit 63532. The proposed manner of use is for irrigation and domestic purposes from January 1 to December 31 of each year and the existing manner of use is for irrigation and domestic purposes from April 1 to October 1 of each year. The proposed place of use is described as being located within the NW $\frac{1}{4}$ of Section 26, E $\frac{1}{2}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27 and the NE $\frac{1}{4}$ of Section 34 all in T.13N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.13N., R.67E., M.D.B.&M.³

IV.

Application 79721 was filed on March 25, 2010, by the Southern Nevada Water Authority to change the point of diversion and place of use of 0.027 cfs or 1.2 afa from an underground source, of water heretofore appropriated under Permit 28653, Certificate 10020. The proposed and existing manner of use is for irrigation and domestic purposes. The proposed use will be from January 1 to December 31 of each year. The proposed place of use is described as being located within the NW $\frac{1}{4}$ of Section 26, E $\frac{1}{2}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27 and the NE $\frac{1}{4}$ of Section 34 all in T.13N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.13N., R.67E., M.D.B.&M.⁴

V.

Application 79722 was filed on March 25, 2010, by the Southern Nevada Water Authority to change the point of diversion and place of use of 1.115 cfs or 807.15 afa from an underground source a portion of water heretofore appropriated under Permit 29220, Certificate 8876. The proposed and existing manner of use is for irrigation and domestic purposes. The proposed use will be from January 1 to December 31 of each

² File No. 79719, official records in the Office of the State Engineer.

³ File No. 79720, official records in the Office of the State Engineer.

⁴ File No. 79721, official records in the Office of the State Engineer.

year. The proposed place of use is within the NW $\frac{1}{4}$ of Section 26, E $\frac{1}{2}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27 and the NE $\frac{1}{4}$ of Section 34 all in T.13N., 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 34, T.13N., R.67E., M.D.B.&M.⁵

VI.

Application 79723 was filed on March 25, 2010, by the Southern Nevada Water Authority to change the point of diversion and place of use of 2.45 cfs or 575.832 afa from an underground source of water heretofore appropriated under Permit 19654, Certificate 6449. The proposed and existing manner of use is for irrigation and domestic purposes. The proposed use will be from January 1 to December 31 of each year. The proposed place of use is within the NW $\frac{1}{4}$ of Section 26, E $\frac{1}{2}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27 and the NE $\frac{1}{4}$ of Section 34 all in T.13N., 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 34, T.13N., R.67E., M.D.B.&M.⁶

VII.

Application 79724 was filed on March 25, 2010, by the Southern Nevada Water Authority to change the point of diversion and place of use of 0.856 cfs or 619.4 afa from an underground source, a portion of water heretofore appropriated under Permit 29221, Certificate 8877. The proposed and existing manner of use is for irrigation and domestic purposes. The proposed use will be from January 1 to December 31 of each year. The proposed place of use is within the NW $\frac{1}{4}$ of Section 26, E $\frac{1}{2}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27 and the NE $\frac{1}{4}$ of Section 34 all in T.13N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.13N., R.67E., M.D.B.&M.⁷

VIII.

Application 79725 was filed on March 25, 2010, by the Southern Nevada Water Authority to change the point of diversion and place of use of 1.3 cfs or 240 afa from an underground source of water heretofore appropriated under Permit 25439, Certificate 9213. The proposed and existing manner of use is for irrigation and domestic purposes.

⁵ File No. 79722, official records in the Office of the State Engineer.

⁶ File No. 79723, official records in the Office of the State Engineer.

⁷ File No. 79724, official records in the Office of the State Engineer.

The proposed use will be from January 1 to December 31 of each year. The proposed place of use is within the NW¼ of Section 26, E½ and the E½ NW¼ of Section 27 and the NE¼ of Section 34 all in T.13N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 26, T.13N., R.67E., M.D.B.&M.⁸

IX.

Applications 79712 and 79719 through 79725 were timely protested by the Confederated Tribes of the Goshute Reservation, U.S. Fish and Wildlife Service, Long Now Foundation and Ely Shoshone Tribe. Application 79721 was also timely protested by Henry C. Volger IV.

X.

A summary of the protests filed by the Confederated Tribes on the Goshute Reservation states that:

Protestant asserts as reasons and grounds for this Protest that: (1) there is insufficient unappropriated water in the proposed source of supply to support the application or the proposed use; (2) the proposed use would conflict impermissibly with existing water rights, including federally reserved water rights, and protectable interests in domestic wells; (3) the proposed use would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the basin from which the water is proposed to be exported; (4) the proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the water is proposed to be exported; (5) the proposed action is not an appropriate long-term use of water; (6) the Applicant has not justified the need to import water from another basin; (7) the Applicant does not have and is not effectively implementing an adequate or reasonable plan for conservation in the area of proposed use; and (8) the Applicant has not demonstrated the good faith intent of financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.

⁸ File No. 79725, official records in the Office of the State Engineer.

XI.

A summary of the protest filed by Henry C. Volger IV states that Application 79721 will have detrimental effects on:

1. Existing stockwater and irrigation rights.
2. Existing domestic wells within the basin.
3. Surface water and native vegetation.
4. Native animal species within the basin.
5. Domestic animals and the ranching industry within the basin.
6. Air quality.

XII.

A summary of the protests filed by the U. S. Fish and Wildlife Service states that they do not object to the protested applications being approved provided that any such approval be issued subject to the conditions and limitations in the protested applications' base rights, which it appears intended to replace. If the Applicant intends, or the State Engineer finds, that any of the elements of the protested applications are materially different from or are in excess of those in the protested applications' base rights, the U. S. Fish and Wildlife Service requests that the applications be denied.

XIII.

A brief summary of the protests filed by the Long Now Foundation questions the State Engineer taking action on either the applications considered here or the temporary applications filed to irrigate for the 2010 season, the applicant's ability to construct a communal piping system to support the irrigation network, submittal of details of the communal piping system, that the Applicant is ensuring adequate water supplies for the Las Vegas Valley, that the place of use will be improved and/or expanded, that the water will be exported from the basin, that there is no water available for appropriation and the applications will have detrimental effects to the public interest.

XIV.

A summary of the protests filed by the Ely Shoshone Tribe states that:

1. There is insufficient water available in the proposed source of supply.
2. The applications and proposed use would conflict with existing water rights and domestic wells.

3. The change proposed in the applications would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the basin from which the export is proposed.
4. The application and proposed change would have an adverse impact on wildlife and wildlife ecosystems in the basin from which the export is proposed and in hydrologically connected basins.
5. The proposed changes would limit economic growth and development in the basin from which the export is proposed.
6. The proposed change is not an appropriate long-term use of Nevada's water.
7. The Applicant has not justified the need to import water from another basin.
8. The Applicant has not implemented a sufficient conservation plan.
9. The Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.
10. The right to amend the submitted protest.
11. Incorporation of other protests.

FINDINGS OF FACT

I.

The protests filed by the Ely Shoshone Tribe and Confederated Tribes of the Goshute Reservation frequently refer to the provisions in Nevada Revised Statute (NRS) § 533.370(6), which apply to applications for an interbasin transfer of water. An examination of the applications and associated supporting maps show that the existing and proposed points of diversion and places of use are within the Spring Valley Hydrographic Basin. The State Engineer finds that the applications considered here do not seek to export water from the Spring Valley Hydrographic Basin; therefore, NRS § 533.370(6) does not apply.

II.

The applications considered here are applications to change water that has been previously appropriated and accounted for in the Spring Valley Hydrographic Basin groundwater budget. A review of records on file in the Office of the State Engineer show the committed groundwater resource of the Spring Valley Hydrographic Basin is significantly less than the estimated perennial yield.

The existing water rights have been placed to historic beneficial use for irrigation purposes at existing points of diversion and places of use. A review of records on file in the Office of the State Engineer do not indicate any significant drawdown in the groundwater aquifer.⁹ A review of well driller reports on file in the Office of the State Engineer show only one domestic well located within 2,500 feet of the proposed points of diversion and that domestic well is located within the Applicant's place of use.¹⁰

The State Engineer finds that the applications do not seek to appropriate additional groundwater from the Spring Valley Hydrographic Basin. The State Engineer finds the proposed change applications will not increase the groundwater demand in the basin. The State Engineer finds that there will be no significant difference between pumping at the existing points of diversion versus the proposed points of diversion on the groundwater aquifer; therefore, the change applications will not conflict with existing rights or protectable interests in domestic wells.

III.

The State Engineer finds the place of use of the applications is located on private lands. The protests pertaining to recreational, aesthetic and cultural resources are not within the considerations found under Nevada water law. The State Engineer's authority in the review of water right applications is limited to considerations identified in Nevada's water policy statutes. The State Engineer finds these protest claims are dismissed.

IV.

Nevada revised Statute § 533.367, requires that before a person may obtain the right to the use of the water from a spring source or from water that seeps to the surface, it must insure that wildlife, which customarily used the water will have access to it. The State Engineer finds that the applications considered here are from an underground source and NRS § 533.367 applies to surface water sources; therefore, the protest issue is without merit.

⁹ Water Level Database (WELLNET), Spring Valley Hydrographic Basin (184), March 16, 2011, official records in the Office of the State Engineer.

¹⁰ Well Log Database, Well Log No. 12475, March 16, 2011, official records in the Office of the State Engineer.

V.

Application 79721 is a change of Permit 28653, Certificate 10200; an existing groundwater right. The proposed change application will not result in an additional demand on the groundwater resources of the Spring Valley Hydrographic Basin. The protest of Volger indicates there will be numerous detrimental effects should Application 79721 be approved. A review of the application file fails to find any substance to support any of the detrimental effects listed in the protest. The Applicant is not seeking a new appropriation of water, rather the Applicant is seeking to change the point of diversion and place of use of an existing water right; therefore, the State Engineer finds this protest is without merit.

VI.

The protests filed by the U. S. Fish and Wildlife Service states that they do not object to the protested applications if they are subject to the terms of the base rights. The protested applications, if permitted will include a standard term used by the State Engineer, with the requirement that this permit is issued subject to the terms and conditions imposed on the base right. Although the protest issue is not a valid ground for rejecting the change applications under NRS § 533.370(5), the State Engineer finds this protest issue is satisfied with the above-mentioned permit term, which makes the protested applications subject to the terms of their base rights.

VII.

The protest filed by the Long Now Foundation concern the amount of water available for appropriation, the Applicant's ability to construct the proposed works and that the water will be potentially exported from the Spring Valley Hydrographic Basin. The Applicant has purchased this existing ranching operation along with other ranches in Spring Valley. The purpose of the applications is to rectify any discrepancy in the existing water rights versus the actual place of use, to use more efficient pivot irrigation, and to construct new irrigation wells capable of placing the existing water rights to beneficial use. The State Engineer finds that the applications are not requesting the export of water and the manner of use will remain irrigation.

A review of the records on file in the Office of the State Engineer shows the current estimates of the perennial yield exceed the committed groundwater resource and the proposed change of existing groundwater is already accounted for in the groundwater

basin budget. The State Engineer finds that there is a reasonable expectation that the Applicant will construct the proposed works and place the water to beneficial use. The State Engineer finds the applications considered here are applications to change water that has been previously appropriated. The State Engineer finds that the applications considered in this ruling do not export water and will not increase the groundwater demand within the Spring Valley Hydrographic Basin; therefore, the protest is without merit.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹¹

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters 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.

III.

The applications considered here are applications to change existing water rights and water will not be exported from the Spring Valley Hydrographic Basin. The State Engineer concludes that many protest grounds pertain to new appropriations of water and the export of water from the Spring Valley Hydrographic Basin. Since the applications are not requesting a new appropriation of water and are not seeking to export any water, the State Engineer concludes that those protest issues may be overruled.

¹¹ NRS Chapters 533 and 534.

¹² NRS § 533.370(5).

IV.

The State Engineer concludes that the applications considered in this ruling will not conflict with existing water rights and protectable interests in domestic wells, and will not threaten to prove detrimental to the public interest.

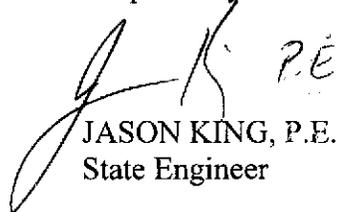
V.

The State Engineer concludes this is not an interbasin transfer of groundwater and the provisions of NRS § 533.370(6) do not apply. Based on the findings, the State Engineer concludes the remaining protest issues are without merit and may be overruled.

RULING

The protests are overruled and Applications 79712, 79719, 79720, 79721, 79722, 79723, 79724 and 79725 are hereby approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 24th day of
March, 2011.