

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

IN THE MATTER OF APPLICATION 79881)
FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE PREVIOUSLY APPROPRIATED)
UNDER PERMIT 65337 WITHIN THE SAN)
EMIDIO DESERT HYDROGRAPHIC BASIN)
(22), WASHOE COUNTY, NEVADA.)

RULING
#6121

GENERAL

I.

Application 79881 was filed on June 2, 2010, by Sonterra Development Company, LLC, to change the point of diversion and place of use of 0.1062 cubic feet per second, not to exceed 34 acre-feet annually (afa), of underground water previously permitted for appropriation under Permit 65337. The proposed manner of use is unchanged and is described as being for irrigation purposes. The proposed place of use is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.30N., R.22E., M.D.B.&M. The existing place of use is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T.30N., R.22E., M.D.B.&M. The change requested by Application 79881, if approved, would transfer the Applicant's existing point of diversion from the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.30N., R.22E., M.D.B.&M. to a point which is located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, T.30N, R.22E., M.D.B.&M.¹

II.

Application 79881 was timely protested by the Pyramid Lake Paiute Tribe of Indians (PLPT) on the following grounds:¹

1. The base water rights sought for transfer by Application No. 79881 originate from Permit No. 65337. The terms of Permit No. 65337 required Proof of Beneficial Use to be filed by March 29, 2002. On information and belief, proof of beneficial use has not been filed and the transfer involves water rights that have been forfeited and/or abandoned pursuant to NRS 534.090.
2. The base water rights sought for transfer by Application No. 79881 were previously sought to be changed for municipal use and a proposed water exportation scheme, illustrating the speculative nature of the attempted use of

¹ File No. 79881, official records in the Office of the State Engineer.

- the water rights. The application should be denied and the base water rights should be cancelled pursuant to NRS 533.045 as the necessity for the use of the water rights does not exist.
3. The base water rights sought for transfer by Application No. 79881 were previously sought to be changed by Application No. 75709. Application No. 75709 is "ready-for action," protested, and should be withdrawn by the applicant or denied by the State Engineer.
 4. Granting the application would threaten to prove detrimental to the public interest and the interests and existing water rights of the Pyramid Lake Paiute Tribe for the reasons stated above, and because, among other things, it would:
 - A. Deplete water from the Pyramid Lake by depleting the underflow from the San Emidio Desert Basin to the Pyramid Lake Basin;
 - B. Degrade or impair water quality in the Pyramid Lake Basin as a result of increasing groundwater withdrawals from the San Emidio Desert Basin;
 - C. Adversely affect regional groundwater levels to the detriment of Pyramid Lake and the groundwater resources of the Pyramid Lake Paiute Tribe;
 - D. Have a detrimental effect on the quality of the Pyramid Lake Paiute Tribe's groundwater resources;
 - E. Prevent or interfere with the conservation or recovery of the two principal fish in the lower Truckee River and Pyramid Lake, the endangered cui-ui and the threatened Lahontan cutthroat trout, in violation of (i) the Endangered Species Act, 16 U.S.C. § 1531 et seq., and (ii) Nevada Law protecting the cui-ui;
 - F. Adversely affect the recreational value of Pyramid Lake;
 - G. Interfere with the purposes for which the Pyramid Lake Indian Reservation was established;
 - H. Deplete the supply of groundwater within the Pyramid Lake Indian Reservation portion of the San Emidio Desert Basin;
 - I. Affect the suitability of irrigation water within the Pyramid Lake Indian Reservation of the San Emidio Basin;
 - J. Increase the cost of supplying irrigation water within the Pyramid Lake Indian Reservation portion of the San Emidio Basin;
 - K. Adversely affect springs and flowing wells within the Pyramid Lake Indian Reservation portion of the San Emidio Desert Basin;
 - L. Decrease the recharge to the San Emidio Desert Basin, to the detriment of existing senior water rights, including those of the Pyramid Lake Paiute Tribe;
 - M. Lower the groundwater table within the Pyramid Lake Indian Reservation portion of the San Emidio Desert Basin which would increase the pumping lift and cost of producing groundwater from that area; and
 - N. Otherwise adversely affect the interests and the reserved water rights of the Tribe.
 5. Granting the application would threaten to prove detrimental to the public interest.

6. Granting the application would threaten to prove detrimental to the public interest in ways that are not yet known to this Protestant, but which may arise or first become known to this Protestant in the period between the date of filing of the Application and the hearing on the protested Application – by way of example Fernley’s Application #57555 was filed on May 1, 1992, and the hearing was not held until February 6, 2006 – and in light of the position of the State Engineer that a specifically stated protest ground may not be amended regardless of the extensive passage of time between the date the protest is required to be filed, and the date of the hearing on a protested application.
7. This Protestant incorporates in this Protest by reference, as if fully set forth herein, every relevant protest ground set forth in any other Protest filed by any other Protestant regarding this application.

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 Application 79881 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.

Permit 65337 was issued on March 29, 2000, to change the place of use of a portion of Permit 62243, Certificate 15453. The purpose of Permit 65337 was to irrigate the pivot corners within the place of use being a total of 17 acres not to exceed 68 afa. Permit 70991 was issued to change 34 afa of Permit 65337 for the purpose of completing irrigation Pivot #7 from Well #5 on the Applicant’s property. Application 79881 seeks to transfer the remaining 34 afa from Permit 65337, because the well under Permit 65337 is no longer in service. Under Application 79881, the new point of diversion will be an existing irrigation well (Well #1) about 1.5 miles to the south. Application 79881 does not seek an additional appropriation of water, only a change in the point of diversion and place of use of an existing water right, Permit 65337. A review of Permit 65337 shows that it is not subject to cancellation, abandonment or forfeiture and the permit is currently in good standing.²

² File No. 65337, official records in the Office of the State Engineer.

The State Engineer finds that Application 79881 is a change application of an existing water right and is not a request for a new appropriation of water from the San Emidio Desert Hydrographic Basin. The State Engineer finds that the water sought for change under Application 79881, represented by Permit 65337, is currently in good standing and is not subject to cancellation, abandonment or forfeiture.

III.

The protest alleges that the granting of the application would threaten to prove detrimental to the public interest in ways that are not yet known to the Protestant but that may arise at a later time. This protest issue also notes that it is the position of the State Engineer that a specifically stated protest ground cannot be amended at a later date regardless of the amount of time that passes between the filing of the protest and its resolution. Nevada water law requires that a protest against the granting of an application must set forth, with reasonable certainty, the grounds of the protest.³

The State Engineer finds that this unknown protest issue is not valid and therefore, is dismissed.

IV.

The protest seeks to incorporate any other protest issue that may be raised by any other protestant regarding this application. A review of the application file shows there are no other protests to this application. In addition, the attempt to co-opt another protest in this manner would not be allowed. A protest against the granting of an application must set forth, with reasonable certainty, the grounds of the protest.³

The State Engineer finds that this protest issue is irrelevant and therefore, is dismissed.

V.

Application 79881 does not seek an additional appropriation of water, only a change in the point of diversion and place of use of an existing water right permit within the San Emidio Desert Hydrographic Basin. In addition, the water sought for change represents water that has been previously appropriated and therefore, accounted for in the groundwater basin budget for the San Emidio Desert Hydrographic Basin.

³ NRS § 533.365(1).

The State Engineer finds that the water sought for change under Application 79881 has already been accounted for in the groundwater basin budget and therefore, will have no additional effect on the groundwater resource.

VI.

A determination was made, after an examination of the records of the Office of the State Engineer, that the Protestant is not shown as the owner of record of any water rights within the San Emidio Desert Hydrographic Basin.⁴ The State Engineer finds that the Protestant does not possess any existing groundwater rights on file with the Office of the State Engineer within the San Emidio Desert Hydrographic Basin.

VII.

The protest alleges that granting the applications would threaten to prove detrimental to the public interest and existing water rights of the PLPT. The Protestant further lists a subset of issues listed as items A through N.

The Applicant has the right to pump water under its existing base right permit or, if approved, pump the same amount of water from Application 79881 at a slightly different location about 1.5 miles away. The net impact on the groundwater resources of the San Emidio Desert Hydrographic Basin would be unchanged whether the application is granted or denied. It is important to remember that the Applicant is not seeking to pump additional water from the basin under a new appropriation, but only seeking to change an existing groundwater right. The water sought for change has been accounted for in the groundwater basin budget as a committed resource.

A review of the proposed point of diversion and place of use shows that it is located about 6 miles northeast of the northern most edge of the Pyramid Lake Indian Reservation and it is not within the Pyramid Lake Indian Reservation portion of the San Emidio Basin.

The State Engineer finds this protest issue is without merit.

VIII.

The Protestant notes that a prior change application was filed under Application 75709 on the same water sought for change under the subject application. A review of records on file in

⁴ Nevada Division of Water Resources Water Rights Database, *Hydrographic Basin Abstract*, San Emidio Desert Hydrographic Basin (22), April 25, 2011, official records in the Office of the State Engineer.

the Office of the State Engineer shows that Application 75709 was denied by the State Engineer.⁵ The State Engineer finds that with the denial of Application 75709, Application 79881 may be considered for review.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁶

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:⁷

- 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 water sought for change is in good standing and the filing of a change application on this existing right is allowed by Nevada water law.⁸

IV.

The State Engineer concludes that the proposed changes in point of diversion and place of use will not threaten to prove detrimental to the public interest.

V.

The State Engineer concludes that Application 79881 will not conflict with existing rights.

⁵ State Engineer's Ruling No. 6085, December 17, 2010, official records in the Office of the State Engineer.

⁶ NRS Chapters 533 and 534.

⁷ NRS § 533.370(5).

⁸ NRS § 533.040(2).

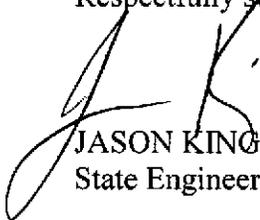
VI.

The State Engineer concludes that the protest issues raised are without merit and may be overruled.

RULING

The protest to Application 79881 is hereby overruled and the application is approved subject to existing water rights and payment of the statutory permit fees.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 2nd day of
June, 2011.