

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

IN THE MATTER OF APPLICATION 80586)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE MARYS RIVER AREA)
HYDROGRAPHIC BASIN (42), ELKO)
COUNTY, NEVADA.)

RULING

#6157

GENERAL

I.

Application 80586 was filed on February 16, 2011, by Joe I. Durant and Janelle E. Durant Revocable Trust to appropriate 0.2 cubic feet per second (cfs), not to exceed 80.0 acre-feet annually (afa), of water from an underground source for commercial purposes. The proposed place of use is described as being located within portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35 and portions of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36 all in T.40N., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T.40N., R.60E., M.D.B.&M.¹

II.

Application 80586 was timely protested by Martha P. Hoots on the grounds that:¹

Use of wells previously drilled by the applicant and their predecessors have dried up wells and surface waters of the protestant and down stream [sic] users. Granting of this application to appropriate additional waters will be a further burden on the water resources of the area and prove detrimental to existing uses and rights.

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

¹ File No. 80586, official records in the Office of the State Engineer.

state of Nevada. The State Engineer finds that in the case of protested Application 80586, 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.

An examination of the records of the Office of the State Engineer show that water rights owned by the Applicant predominate near the proposed point of diversion. The only other permittee in close proximity is the Spratling Living Trust with Permit 47437, Certificate 12021 from an underground well, for stock water in the NW¼ SW¼, of Section 1, T.39N., R.60E., M.D.B.&M. The State Engineer finds that there are no other existing water rights at the proposed point of diversion.²

III.

Application 80586 was protested on the grounds that the proposed appropriation of 80 afa of water would adversely affect the Protestant's and downstream user's 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 often applied to underground permits is the condition that the approval of the permit will allow for a reasonable lowering of the static water. The State Engineer has determined that the Protestant's closest point of diversion, being Permit 44941, Certificate 11685 for stockwater,³ is separated from the Applicant's proposed point of diversion by approximately 48,787.2 feet. On September 23, 2011, the Office of the State Engineer personnel reviewed available data within the vicinity of the proposed application and conducted analysis to evaluate the Protestant's concerns. Available data included well log records, pump tests, local geology and associated measured or computed aquifer properties. Also included in the data was the fact that there are five permits in close proximity to Application 80586 that have a total combined duty of 7,536 afa. Assuming transmissivity of 50-500 SFD based on local pump test and storativity between 0.005 and 0.01, current pumpage of 7,536 afa from the array of Applicants wells amount to a drawdown at the Protestant's well of between 0-10 feet after 10 years and 0-40 feet

² File No. 47437, official records in the Office of the State Engineer.

³ File No. 44941, official records in the Office of the State Engineer.

after 20 years of constant pumping. The increased impact to the Protestant's well by pumping an additional 80 acre-feet annually at the Applicant's well is imperceptible using the Theis method and the above assumptions.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁵

- 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.

Application 80586 if approved would appropriate 80 acre-feet annually from a point of diversion within 48,787.2 feet from the closest of the Protestant's stockwater wells. The potential drawdown effect that this amount of pumpage would have on the Protestant's wells was evaluated by employing a standard analytical method. The analysis indicated that the approval of the subject application would not have any appreciable impact on the Protestant's stockwater wells. The State Engineer concludes that the issuance of a water right permit derived from Application 80586 would not threaten to prove detrimental to the public interest.

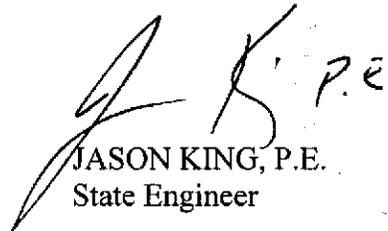
⁴ NRS Chapters 533 and 534.

⁵ NRS § 533.370(5).

RULING

The protest to Application 80586 is hereby overruled and Application 80586 is hereby approved subject to existing rights and the payment of statutory filing fees.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 2nd day of
December, 2011.