

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

IN THE MATTER OF APPLICATION 76187)
FILED TO CHANGE THE POINT OF)
DIVERSION OF AN UNDERGROUND)
SOURCE PREVIOUSLY APPROPRIATED)
UNDER PERMIT 43833, CERTIFICATE)
12478, WITHIN THE CARSON VALLEY)
HYDROGRAPHIC BASIN (105), DOUGLAS)
COUNTY, NEVADA.)

RULING

#6178

GENERAL

I.

Application 76187 was filed on August 20, 2007, by the Park Cattle Company to change the point of diversion of 0.095 cubic feet per second (cfs), not to exceed 46.15 acre-feet seasonally, of water previously appropriated under Permit 43833, Certificate 12478 from an underground source for irrigation purposes. The place of use is described as being 38.69 acres within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T.13N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T.13N., R.20E., M.D.B.&M. The existing point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T.13N., R.20E., M.D.B.&M.¹

II.

Application 76187 was protested by the Pyramid Lake Paiute Tribe of Indians (Tribe) on grounds as summarized below:

1. Granting the application would threaten to prove detrimental to the public interest in light of the over-commitment and over-appropriation of the groundwater available in the basin, and the resulting inability of the perennial yield to serve existing permits and commitments with groundwater, and in light of the obligations of the State Engineer pursuant to NRS Chapters 533, 534 and 278 to require that there be adequate plans to protect existing rights, uses and commitments of groundwater and to exercise all appropriate authority and discretion to control over-demand on the source and to protect

¹ File No. 76187, official records in the Office of the State Engineer.

both the public and other right holders of both surface water and groundwater rights.

2. The State Engineer should not authorize the construction of any new wells or any changes to permitted water rights at least until he exercises his full authority to eliminate the over-commitment of the basin's water resources and all adverse effects of groundwater pumping on Carson River surface flows.
3. Granting the application may 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.
4. Granting the application would threaten to prove detrimental to the public interest.
5. This Protestant incorporates any other protest filed by any other Protestant.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 533.365(4) 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 Nevada. The State Engineer finds that in the case of protested Application 76187 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.

The protest asserts that the permitted and certificated groundwater rights in the Carson Valley Hydrographic Basin far exceed the estimated perennial yield, and as such, the pumping of groundwater is or will be taking Carson River surface water that is claimed by senior water right holders in the Newlands Project; thus, the use of

groundwater is impacting existing rights and Pyramid Lake and its fishery. It should be noted that the Protestant is not a water right holder on the Carson River, does not have any existing decreed right to Carson River surface water, and is not the owner of record of any groundwater within the Carson Valley Hydrographic Basin. Pyramid Lake is the terminus of the Truckee River.

The Nevada Division of Water Resources (Division) spends a significant amount of time in the Carson Valley area performing fieldwork. Pumpage inventories have been conducted since 1987 to monitor the quantity of water pumped in the Carson Valley Hydrographic Basin. In conjunction with this field work, the Division enforces permit compliance and investigates any improper use of groundwater. Also, water levels are measured at selected sites and field investigations are conducted throughout the year as needed.

When water rights are dedicated for municipal use, the dedication policy of the Division is designed to cover the maximum amount of water ever anticipated to be used and actual use has been demonstrated to be less than the total amount dedicated. Relinquishments of water rights are also required for domestic well subdivisions even though domestic wells normally are exempt from the permitting provisions of Nevada water law. Finally, the Division has consistently performed its obligation to protect existing rights, and to assure water is available for development, through signatory authority over subdivision maps.

Water level data collected by the Division fails to indicate any significant declining trends that would support the allegation that the basin is over-appropriated.² In addition, annual surface-water discharges as measured at the United States Geological Survey gauge for the Main Stem of the Carson River near Carson City actually increased over 4% for the 30-year period of 1976 through 2005 when compared to the prior 30-year period.³

² Water Level Data for Carson Valley Hydrographic Basin (105), official records in the Office of the State Engineer.

³ *Evaluation of Available Stream Flow Data for the Carson River and Review of Random Lithologic Records of Drilled Wells within the Carson Valley, Douglas County, Nevada*, prepared by R.O. Anderson Engineering, Inc. in collaboration with Turnipseed Engineering, Ltd., p. 8.

In State Engineer's Ruling No. 5791, an in-depth analysis of the groundwater resources showed the Carson Valley Hydrographic Basin is not severely over-appropriated and is not over-pumped.⁴ The State Engineer finds that the analyses contained in State Engineer's Ruling No. 5791 is still valid, and hereby adopts the findings and conclusions of State Engineer's Ruling No. 5791.

The State Engineer finds that the Division of Water Resources has and continues to perform its obligations in regards to management of the water resources of the Carson Valley Hydrographic Basin. The State Engineer further finds that the Carson Valley Hydrographic Basin is not over-appropriated and an analysis of the data collected by the Division, such as, pumpage inventories and water levels, support this finding. The State Engineer finds that the water sought for change under Application 76187 has already been accounted for in the groundwater basin budget and therefore, will have no additional effect on the groundwater resource.

III.

Application 76187 is not requesting a new appropriation of water. Rather, the application is seeking to change only the point of diversion of an existing certificated water right. Application 76187 seeks to move the point of diversion of Permit 43833, Certificate 12478 approximately 3,500 feet to a newer and more efficient well recently completed by the Applicant.¹

The State Engineer finds that the application before him changes an existing certificated water right and the application does not seek a new appropriation of water. The State Engineer finds the proposed change will have no additional impact on the Carson Valley Hydrographic Basin and no effect upon the Protestant.

IV.

The protest alleges that granting the application would threaten to prove detrimental to the public interest in ways that are not yet known to it, but which may arise before the application is actually considered by the State Engineer. The State Engineer finds that NRS § 533.365 provides that a protest must set forth with reasonable certainty the ground of the protest, which shall be verified by the affidavit of the protestant, his

⁴ State Engineer's Ruling No. 5791, October 23, 2007, official records in the Office of the State Engineer.

agent or attorney and this protest ground does not set forth its ground with reasonable certainty and is thereby overruled.

V.

The protest alleges that granting the application would threaten to prove detrimental to the public interest and the protest seeks to incorporate any other issues raised by any other protestant. The State Engineer finds that NRS § 533.365 provides that a protest must set forth with reasonable certainty the ground of the protest, which shall be verified by the affidavit of the protestant, his agent or attorney, and this protest ground does not set forth its ground with reasonable certainty and is thereby overruled. It is noted that there are no other protests to the application.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters 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 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 76187 seeks to move the point of diversion 3,500 feet from its current location to an existing well. The existing water right is a certificated underground water right in good standing and the only change sought is in the point of diversion. All other elements of the existing water right will remain unchanged. The State Engineer concludes that the protest issues raised are without merit and may be overruled.

⁵ NRS Chapters 533 and 534.

⁶ NRS § 533.370(2).

IV.

The State Engineer concludes that change Application 76187 will not conflict with existing rights and protectible interests in existing domestic wells, and will not threaten to prove detrimental to the public interest.

V.

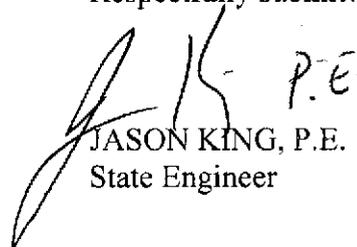
The State Engineer concludes that the water sought for change is in good standing, and the filing of a change application on this existing water right is allowed by Nevada water law.⁷

RULING

The protest is overruled and Application 76187 is hereby approved subject to:

1. Existing water rights; and
2. Payment of the statutory permit fee.

Respectfully submitted,

 P.E.
JASON KING, P.E.
State Engineer

Dated this 7th day of
May, 2012.

⁷ NRS § 533.040(2).