

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

IN THE MATTER OF APPLICATION 81650)
FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF A)
PORTION OF THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 20376,)
CERTIFICATE 6798, WITHIN THE DIAMOND)
VALLEY HYDROGRAPHIC BASIN (153),)
EUREKA COUNTY, NEVADA.)

RULING
#6193

GENERAL

I.

Application 81650 was filed on March 9, 2012, by Ruby Hill Ranch, LLC to change the point of diversion and place of use of 1.7275 cubic feet per second, not to exceed 106.448 acre-feet annually, of water previously appropriated under Permit 20376, Certificate 6798 from an underground source. The proposed manner of use is unchanged and is for irrigation and domestic purposes from January 1st to December 31st of each year. The proposed place of use is described as being located within portions of Lots 15 and 16 of Section 21 and portions of Lots 1 and 2 of Section 28, T.20N., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 15 of Section 21, T.20N., R.53E., M.D.B.&M.¹ The place of use is being changed from 26.612 acres described as being located within Lot 15 of Section 21, T.20N., R.53E., M.D.B.&M. The existing point of diversion is located within Lot 14 of Section 21, T.20N., R.53E., M.D.B.&M.

II.

Application 81650 was timely protested by Eureka County on the following grounds:

Application No. 81650 proposes to change 106.448 acre-feet annually from Permit 20376, Certificate 6798. There is evidence establishing that there has been no beneficial use pursuant to Permit 20376, Certificate 6798 for more than five (5) years, causing a forfeiture of such water rights pursuant to NRS 534.090. Further, the State Engineer has pending a notice of such forfeiture to the Applicant.

¹ File No. 81650, official records in the Office of the State Engineer.

Application 81650 was timely protested by Owen J. Miller on the following grounds:

As the owner of the well in which permit 20376 has its current point of diversion, I am concerned for several reasons about the application to change the point of diversion:

1. This is already a very stressed point of diversion. So why stress it more with another new point of diversion so close (approximately 700ft.), proposed to pump in excess of 700 gpm.
2. In light of this fact, the land intended to be irrigated has not been irrigated for well over 15 years. This is way past the 5 years allowed without beneficial use, causing a forfeiture of these water rights. Furthermore, the State Engineer has pending a notice of such forfeiture to the applicant.

FINDINGS OF FACT

I.

Nevada Revised Statutes § 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. The State Engineer finds that sufficient evidence is available within the records of the Office of the State Engineer to evaluate the merits of Application 81650 and its associated protests and a hearing is not necessary.

II.

The State Engineer finds that moving the point of diversion a distance of 700 feet from the existing point of diversion will alleviate the effect on the existing point of diversion more than if the water considered here was pumped from the existing point of diversion.

III.

The State Engineer finds that Permit 20376, Certificate 6798, the base right to Application 81650, is currently in good standing in the Office of the State Engineer. Application 81650 proposes to change an existing water right. The State Engineer finds the owner was notified by certified mail on February 8, 2012, that the portion of water considered here has not been put to beneficial use in the past four years and further administrative action will be determined on or around February 8, 2013. Application 81650 was filed prior to the close of the five-year period. The State Engineer finds the water considered in Application 81650 is currently in good standing and will not create an additional appropriation of underground water

from the Diamond Valley Hydrographic Basin; therefore, it can be used to support the change proposed by the Applicant.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate public waters where:³

- 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.

Permit 20376, Certificate 6798 is an existing water right and the change in the point of diversion and place of use of a portion as requested under Application 81650 will not increase the consumptive use in the groundwater basin. The State Engineer concludes the approval of Application 81650 will not create an additional appropriation of underground water from the Diamond Valley Hydrographic Basin.

IV.

The State Engineer concludes Application 81650 was filed to change a portion of Permit 20376, Certificate 6798 that is currently in good standing in the Office of the State Engineer.

V.

The State Engineer concludes that the use of water under Application 81650 will not conflict with existing water rights and protectable interests in domestic wells, and will not threaten to prove detrimental to the public interest.

² NRS Chapters 533 and 534.

³ NRS § 533.370(2).

RULING

The protests to Application 81650 are hereby overruled and the application is granted subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 6th day of
August, 2012.