

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

IN THE MATTER OF APPLICATION 76754 )  
FILED TO CHANGE THE POINT OF )  
DIVERSION OF PERMIT 65060, WITHIN )  
THE TRACY SEGMENT HYDROGRAPHIC )  
BASIN (83), STOREY COUNTY, NEVADA. )

**RULING**  
**#6239**

**GENERAL**

**I.**

Application 76754 was filed on February 15, 2008, by TRI General Improvement District to change the point of diversion of 2.5 cubic feet per second, not to exceed 1,000 acre-feet annually (afa), of groundwater for quasi-municipal purposes, as originally appropriated under Permit 65060. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 12, T.19N., R.22E., M.D.B.&M. The proposed place of use is described as being located within the SW $\frac{1}{4}$  of Section 32 lying south of the Southern Pacific Railroad, S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 32, S $\frac{1}{2}$  of Section 33, S $\frac{1}{2}$  of Section 34, and all of Section 36, T.20N., R.22E., M.D.B.&M., Sections 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, N $\frac{1}{2}$  of Section 23 and the N $\frac{1}{2}$  of Section 24, T.19N., R.22E., M.D.B.&M., the S $\frac{1}{2}$  of Section 29, S $\frac{1}{2}$  of Section 30, all of Section 31 and all of Section 32, T.20N., R.23E., M.D.B.&M., and Sections 5, 6, 7, 8, W $\frac{1}{2}$  of Section 9, W $\frac{1}{2}$  of Section 16, all of Sections 17, 18, 19, 20, 21, 29, 30 and the W $\frac{1}{2}$  of Section 22, T.19N., R.23E., M.D.B.&M.<sup>1</sup>

**II.**

The Application was timely protested by the Pyramid Lake Paiute Tribe of Indians (Tribe) on various grounds as summarized below:<sup>1</sup>

1. The water right associated with Application 76754 is subject to State Engineer's Ruling No. 5747, which is currently challenged by multiple appeals. The State Engineer should not act on Application 76754 until the appeals of Ruling No. 5747 are resolved, due to it affecting the existence or amount of water rights sought for change by the application.
2. The application seeks to change the point of diversion under Application 65060, which has not yet been permitted and is subject to submittal of an "approved monitoring plan." Application 76754 should not be approved due to the conditions for the approval of Application No. 65060 not having been met.

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<sup>1</sup> File No. 76754, official records in the Office of the State Engineer.

3. Granting the application would threaten to prove detrimental to the public interest in light of the over-appropriation of groundwater in the hydrographic basin and the perennial yield cannot serve existing permits and commitments of groundwater.
4. Granting the application would threaten to prove detrimental to the Tribe and the purposes for which the Pyramid Lake Indian Reservation was created by depleting flows in the Truckee River and inflows to Pyramid Lake because of the connection, both legal and physical, between the groundwater and the surface water in the basin.
5. Granting the application may threaten to prove detrimental to the public interest in ways not yet known to the Protestant.

### FINDINGS OF FACT

#### I.

Nevada Revised Statute § 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 the State of Nevada. The State Engineer finds that 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 first protest ground is that Permit 65060, the water right that Application 76754 seeks to change, was subject to State Engineer's Ruling No. 5747, which is under appeal and no action should be taken on Application 76754 until the appeals are resolved because any decision made may affect the existence or amount of the water right under Permit 65060.

The State Engineer finds that Ruling No. 5747, which included in part the decision to approve Permit 65060, is no longer under appeal and that State Engineer's Amended Ruling No. 5747-A was issued pursuant to the Remand Order of the Second Judicial Court filed on May 1, 2013.<sup>2</sup> The State Engineer finds that in Amended Ruling No. 5747-A he concluded that there was sufficient unappropriated groundwater to support the approval of Permit 65060, and the State Engineer finds that Permit 65060 was approved March 21, 2011.<sup>3,4,5</sup>

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<sup>2</sup> Order of Remand (May 1, 2013) in *Pyramid Lake Paiute Tribe v. Taylor*, 2d Jud. Dist. Ct. of Nev., Case No. CV-07-01507.

<sup>3</sup> File No. 65060, official records in the Office of the State Engineer.

<sup>4</sup> State Engineer's Ruling No. 5747, dated June 27, 2007, official records in the Office of the State Engineer.

<sup>5</sup> State Engineer's Amended Ruling No. 5747-A, dated May 31, 2013, official records in the Office of the State Engineer.

### III.

The second protest ground is that Application 65060 has not been permitted and is subject to a requirement for an approved monitoring plan. Application 65060 was permitted on March 21, 2011, and a monitoring plan was required under the terms of the permit. Application 76754 seeks to change only the point of diversion but not the manner and place of use of Permit 65060, so the original requirement for a monitoring plan will be made a permit term upon approval of Application 76754. The State Engineer finds that Application 76754 seeks to change an existing permit in good standing and that the requirement for an approvable monitoring plan will still be in effect upon approval of Application 76754.<sup>1,3</sup>

### IV.

The third protest ground is that the hydrographic basin is over-appropriated and that the perennial yield is insufficient for existing groundwater permits and commitments. In State Engineer's Amended Ruling No. 5747-A, the State Engineer made findings of fact and conclusions of law that there was sufficient unappropriated water available from the underground source to allow approval of Permit 65060 as part of a group of permits whose total combined duty of water is not to exceed 2,740 afa.<sup>5</sup> The total combined duty of water under Permits 65060, 65061, 65062, 65063, 65064, 65065, 65066, 65067, 65068, 65069, 65070 and 65071 is not to exceed 2,740 acre-feet of water, and Application 76754 will be limited to the same permit term.<sup>3</sup> Application 76754 is not seeking a new appropriation of water, but is seeking to change the point of diversion of the existing Permit 65060.<sup>1</sup>

The State Engineer finds that Application 76754 does not seek to appropriate additional groundwater from the Tracy Segment Hydrographic Basin. The State Engineer finds that the proposed change application will not increase the groundwater demand in the basin.

### V.

The fourth protest ground is that granting the applications would threaten to prove detrimental to the Tribe and the purposes for which the Pyramid Lake Indian Reservation was created by depleting flows in the Truckee River and inflows to Pyramid Lake because of the legal and physical connection between the groundwater and the surface water in the basin.

In considering Application 65060 and others in State Engineer's Amended Ruling No. 5747-A, the State Engineer found that substantial evidence was not presented regarding alleged interference with the purposes for which the Pyramid Lake Indian Reservation was created. The State Engineer also addressed the connection between the groundwater source and the Truckee River in Finding of Fact V, where he found that approval of the subject applications would be

limited to the groundwater recharge from precipitation available within the Tracy Segment Hydrographic Basin.<sup>5</sup>

The State Engineer finds that Application 76754 does not seek to appropriate additional groundwater from the Tracy Segment Hydrographic Basin and that these protest issues were already addressed at the time of the original appropriation under Permit 65060.

## VI.

Nevada Revised Statute (NRS) § 533.365(1) provides that any person may file a written protest against the granting of the application, setting forth with reasonable certainty the grounds of such protest. The State Engineer finds that the protest issue stating that granting the application may threaten to prove detrimental to the public interest in ways not yet known to the Protestant does not set forth with reasonable certainty the grounds of the protest; therefore, this protest issue is dismissed.

## CONCLUSIONS OF LAW

### I.

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

### II.

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

- 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.

Application 76754 seeks to change the point of diversion of Permit 65060 and is not a new appropriation. Permit 65060 has been approved and is a water right in good standing. Application 76754 will be subject to the same permit terms as Permit 65060 with respect to a monitoring plan and total combined duty. Therefore, the State Engineer concludes that approval of Application 76754 would not conflict with existing rights or with protectable interests in existing domestic wells and would not threaten to prove detrimental to the public interest.

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<sup>6</sup> NRS Chapters 533 and 534.

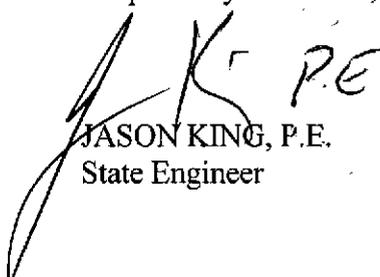
<sup>7</sup> NRS § 533.370(2).

**RULING**

The protest is overruled, and Application 76754 is hereby approved subject to:

1. Existing rights;
2. Payment of the statutory permit fees; and
3. An approved monitoring plan.

Respectfully submitted,



JASON KING, P.E.  
State Engineer

Dated this 20th day of  
September, 2013.