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

IN THE MATTER OF APPLICATION 75775) FILED TO APPROPRIATE THE PUBLIC) WATERS FROM AN UNDERGROUND) SOURCE WITHIN THE WHITE RIVER) VALLEY HYDROGRAPHIC BASIN (207),) WHITE PINE COUNTY, NEVADA.)	**RULING** **#6264**

GENERAL

I.

Application 75775 was filed on May 23, 2007, by Douglas W. Carson, Trustee of the Douglas W. Carson Trust dated 10/19/1990, to appropriate 1.0 cubic foot per second (cfs), for the irrigation of 85.43 acres of land from an underground source. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 31 T.13N., R.61E., M.D.B.&M. The proposed place of use is described as being located within portions of Lot 1, NE¼ NW¼, NW¼ NE¼, NE¼ NE¼ of Section 31, and portions of Lots 6 and 7 of Section 30, all in T.13N., R.61E., M.D.B.&M.[1] The Applicant states that portions of this application will be comingled with Permit 7251 and Permit 70969.

II.

Application 75775 was timely protested by Charles M. Brown on the ground that allowing the well would deplete his springs and water on his property used for farming and livestock feed and water. The protest was accompanied by a copy of State Engineer's Ruling No. 2092, dated November 4, 1975, which denied Application 28875.[1]

III.

Application 75775 was timely protested by Thomas E. and Angela Rosevear on the following grounds:[1]

> Any pumping from an underground source will seriously impact existing springs and other adjudicated water rights, both adjacent to and below Mr. Carson's property. These are contributories [sic] to White River. This year surface waters are precariously low, and we have had to let many of

[1] File No. 75775, official records in the Office of the State Engineer.

> our fields dry up to utilize what water we have. Enclosed is a prior ruling on a similar attempt to pump from an underground source on Mr. Carson's property.

The protest was accompanied by a copy of State Engineer's Ruling No. 2092, dated November 4, 1975, which denied Application 28875.

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 sufficient evidence is available in the records of the Office of the State Engineer to evaluate the merits of Application 75775 and the associated protests and a hearing is not necessary

II.

On March 13, 2012, a certified letter was sent by the Office of the State Engineer to both Protestants inquiring if they were still interested in pursuing their protests. The letter stated that a failure to respond within 30 days would indicate a lack of interest and the protest would be dismissed. The Office of the State Engineer received delivery confirmation cards from the U.S. Postal Service for both letters on March 19, 2012.[1]

On March 21, 2012, the Office of the State Engineer received a letter from Protestant Thomas Rosevear indicating his continued interest in pursuing his protest. No response was received from Protestant Brown.[1]

The State Engineer finds that only the issues contained in the Rosevear protest will be considered and the lack of response from Mr. Brown indicates the protestant is no longer interested in pursuing the grounds of his protest. Mr. Brown's protest is hereby dismissed.

III.

In the first area of the protest, the Rosevears allege that the pumping of groundwater under Application 75775 would seriously impact existing springs. The Protestant points out concerns with the impact of the Applicant's proposed diversion of 1.0 cfs from a well in the vicinity of surface water and springs with existing rights. The

Protestant cites State Engineer's Ruling 2092. Ruling 2092 addressed the protest of Jerry F. Gardner, who was concerned that Application 28875, filed by Ernest Ulrich, would adversely impact his existing spring rights under Permits 28771 and 28819. Application 28875 proposed to divert 6.0 cfs from a well located approximately 1,300 feet from the spring area serving Permit 28819, and about 100 feet from the spring area serving Permit 28771. Due to the proposed point of diversion being in such close proximity to Mr. Gardner's permitted surface water right, and the fact that Mr. Ulrich's application proposed to divert 6.0 cfs (nearly 2,700 gallons per minute), in Ruling 2092, the State Engineer upheld Mr. Gardner's protest and Application 28875 was denied.

In contrast, the point of diversion for Application 75775 is located approximately 4,500 feet, and down gradient from the springs identified in Ruling 2092. Furthermore, the requested diversion rate of 1.0 cfs for the proposed well is one-sixth that of the application denied in Ruling 2092. The proximity to the springs and proposed pumping rate of the well associated with Application 75775 are significantly different than that in Ruling 2092. Due to the increased distance from the springs and the lower proposed diversion rate, the State Engineer finds that a comparison between the denial of Application 28875 in Ruling 2092 and the request in Application 75775 is inapplicable, and this portion of the protest is hereby overruled.

IV.

The second area of concern of Protestant Rosevear's protest is the allegation that the pumping of groundwater under Application 75775 would seriously impact other adjudicated water rights, both adjacent to and below the Applicant's property. Satellite imagery shows the proposed point of diversion to be approximately 450 feet from the banks of the White River, the nearest adjudicated surface water system.[2]

Nevada Administrative Code § 534.390 requires that any well drilled within ¼ mile (1,320 feet) of a river, lake, perennial stream or unlined reservoir or canal be sealed to a depth of 100 feet, to avoid interference with nearby surface water sources. Application 75775 requests 1.0 cfs of water to irrigate 85.43 acres of land from March 1 until October 15 of each year. This would result in a maximum allowed duty of 341.72

[2] Satellite imagery map, File No. 75775, official records in the Office of the State Engineer.

acre-feet. However, it is also stated that this well would supplement the water utilized under Permits 7251, Certificate 1330, and Permit 70969. Both of these existing permits are for surface water from Smith Creek for the irrigation of a nearly identical place of use as the one described in Application 75775, the exception being an additional 9.76 acres of land within the place of use not currently under cultivation. The net result would be that the proposed well would supplement over 85% of lands that are now being irrigated by existing surface water rights. Therefore, the likelihood of the subject well being pumped consistently at full capacity is quite small. After examining all of the factors involved, the State Engineer finds that a 100-foot seal in the proposed well to be an appropriate and effective solution to mitigate any potential interference by this well to the nearby surface water source.

V.

Current records in the Office of the State Engineer show that the designated White River Valley Hydrographic Basin has a perennial yield of 37,000 acre-feet annually,[3] and that the Office of the State Engineer has issued approximately 34,938 acre-feet of Active Annual Duty permits.[3] Three Desert Land Entry applications requesting a total of 1,280 acre-feet have been filed ahead of application 75775, making the maximum possible appropriation for senior rights approximately 36,218 acre-feet.[4] Application 75775 is requesting enough water to irrigate 85.43 acres, or 341.72 acre-feet per season (March 1 – October 15). Therefore, the State Engineer finds that there is unappropriated water at the source sufficient to support the amount requested in Application 75775.

CONCLUSIONS

I.

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

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[3] Hydrographic Area Summary, File No. 75775, official records in the Office of the State Engineer.
[4] Hydrographic Summary of pending Applications, dated Nov. 6, 2013, File No. 75775, official records in the Office of the State Engineer.
[5] NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water 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 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 75775 requests underground water from a point of diversion that is sufficiently removed from springs with existing rights. The State Engineer concludes that there is unappropriated water at the source sufficient to satisfy the requirements of the requested appropriation. The State Engineer concludes that the proposed point of diversion for Application 75775 lies within one quarter mile of the White River and that the requirement of a 100-foot seal in the subject well will appropriately mitigate any affects. The State Engineer concludes Application 75775 will not conflict with existing rights, or threaten to prove detrimental to the public interest.

RULING

The protest to Application 75775 is hereby overruled and Application 75775 is hereby approved subject to existing rights, payment of the statutory permit fees, and the installation of a minimum 100-foot seal in the proposed well.

Respectfully submitted,

P.E.

JASON KING, P.E.
State Engineer

Dated this 19th day of February, 2014.

[6] NRS § 533.370(2).