

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

IN THE MATTER OF APPLICATIONS )  
83121, 83122 AND 83123 FILED TO )  
CHANGE THE POINT OF DIVERSION, )  
PLACE OF USE, AND MANNER OF USE )  
OF A PORTION OF THE PUBLIC WATERS )  
OF AN UNDERGROUND SOURCE WITHIN )  
THE SMITH VALLEY HYDROGRAPHIC )  
BASIN (107), LYON COUNTY, NEVADA. )

**RULING**  
**#6278**

**GENERAL**

**I.**

Application 83121 was filed on September 27, 2013, by the 2008 Vlot Revocable Trust, to change the point of diversion, manner and place of use of 0.4859 cubic feet per second (cfs), a portion of the underground water previously appropriated under Permit 16628, Certificate 5317, in the Smith Valley Hydrographic Basin, for commercial purposes from January 1<sup>st</sup> through December 31<sup>st</sup> of each year. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 26, T.12N., R.23E., M.D.B.&M. The proposed place of use is described as being located within the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 23 and the NW $\frac{1}{4}$  and N $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 26, all in T.12N., R.23E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 36, T.12N., R.23E., M.D.B.&M. The existing place of use is described as being 38.000 acres located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 4.218 acres located within a portion of the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , and 11.815 acres located within a portion of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 36, T.12N., R.23E., M.D.B.&M. The existing period of use is April 1<sup>st</sup> through October 31<sup>st</sup> of each year. The project description and remarks on the application describe the proposed use as a commercial dairy and the water usage estimate attached to the application is 184 acre-feet annually (afa) for 4,256 head of cattle, cooling systems, washing systems and associated processes.<sup>1</sup>

**II.**

Application 83122 was filed on September 27, 2013, by the 2008 Vlot Revocable Trust, to change the point of diversion, manner and place of use of 0.5063 cfs, a portion of the

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<sup>1</sup> File No. 83121, official records in the Office of the State Engineer.

underground water previously appropriated under Permit 18368, Certificate 5689, in the Smith Valley Hydrographic Basin, for commercial purposes from January 1<sup>st</sup> through December 31<sup>st</sup> of each year. The proposed point of diversion and place of use have the same description as Application 83121. The existing point of diversion is described as being located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 36, T.12N., R.23E., M.D.B.&M. The existing place of use is described as being 40.000 acres located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 4.218 acres located within a portion of the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , and 11.815 acres located within a portion of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 36, T.12N., R.23E., M.D.B.&M. The existing period of use is April 1<sup>st</sup> through November 1<sup>st</sup> of each year. The application describes the same project as on Application 83121.<sup>2</sup>

### III.

Application 83123 was filed on September 27, 2013, by the 2008 Vlot Revocable Trust, to change the point of diversion, manner and place of use of 0.0067 cfs of the underground water previously appropriated under Permit 12305, Certificate 3679, in the Smith Valley Hydrographic Basin, for commercial purposes from January 1<sup>st</sup> through December 31<sup>st</sup> of each year. The proposed point of diversion and place of use have the same description as Application 83121. The existing point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 36, T.12N., R.23E., M.D.B.&M. The existing place of use is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 36, T.12N., R.23E., M.D.B.&M. The existing period of use is January 1<sup>st</sup> through December 31<sup>st</sup> of each year. The application describes the same project as on Application 83121.<sup>3</sup>

### IV.

Application 83121 was timely protested by Charles Russell Jones, Robert A. Lumbard, Gerald K. Simmons, Frank and Linda Ely, Steven Deckard, Alan J. Wojciak and Thomas L. Sherwood on grounds summarized as follows:<sup>1</sup>

1. Changing from irrigation to commercial.
2. The amount of water from the well is 1,200 afa [Sherwood states 144 afa] to supply only a third of the water required to maintain a herd of 6,400 head of cattle.
3. The proposed change will adversely affect the aquifer, especially due to the severe drought in Nevada.
4. The period of use from April 1 to October 31 is to allow for the aquifer to recover; a change to annual use will cause the aquifer to be seriously depleted and may cause their domestic wells to go dry.

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<sup>2</sup> File No. 83122, official records in the Office of the State Engineer.

<sup>3</sup> File No. 83123, official records in the Office of the State Engineer.

5. The only way to get the water to the place of use is by drilling a new well, and there is a moratorium on drilling a new agricultural or commercial well in Nevada.

#### V.

Application 83122 was timely protested by Charles Russell Jones, Robert A. Lumbard, Gerald K. Simmons, Frank and Linda Ely, Steven Deckard, Alan J. Wojciak and Thomas L. Sherwood on grounds summarized as follows:<sup>2</sup>

1. The Applicant will seek at some point many more acre-feet annually than that well is now permitted to be used for irrigation.
2. The well should not be in the same aquifer as protestant; this well is located south of the basin boundary and historically water has not been allowed to be moved across that boundary line to the northern water basin nor transferred to another basin. The boundary is documented in Water Resources Bulletin No. 43 and the NDWR has a more defined boundary line.
3. The period of use from April 1 to November 1 is to allow for the aquifer to recharge from rain, snow melt and the Walker River.
4. The severe drought prevents the aquifer from recharging and the water level continues to drop with the water already being used.

#### VI.

Application 83123 was timely protested by Charles Russell Jones, Robert A. Lumbard, Gerald K. Simmons, Frank and Linda Ely, Steven Deckard, Alan J. Wojciak and Thomas L. Sherwood on grounds summarized as follows:<sup>3</sup>

1. The Applicant will apply for a great deal more acre-feet of water than the 4.8 afa currently permitted and the application will allow the applicant to use a great many more acre feet of water annually from this well on their property.
2. This well has not been used for many years and thus the permit has expired. This would mean that they would need to apply for a new permit and increase the permitted water rights to exceed 1,200 afa, which in turn will adversely affect the aquifer, especially due to the severe drought in Nevada.

#### VII.

Applications 83121, 83122 and 83123 were timely protested by the Hunewill Land & Livestock Co., Inc., on grounds summarized as follows:<sup>1,2,3</sup>

1. The proposed point of diversion is too close to Protestant's irrigation well under Permit 18804, Certificate 5967 and can cause the water level in their well to drop, requiring a larger, deeper motor to pump the same volume of water.
2. Protestant's well is primarily used in drought years, which allows the aquifer to recover in the intervening years, while this use will be year round, which will not allow the aquifer to recover.
3. Protestant requests that the point of diversion be further east, about 2,500 feet from Protestant's well.

### VIII.

Applications 83121, 83122 and 83123 were timely protested by Glen Peters on grounds summarized as follows:<sup>1,2,3</sup>

1. There is no indication of the amount of water they will need to support the Smith Valley Dairy Farms. This will be done on a future permit, which may not afford us the opportunity to protest or know the amount that will be requested.
2. Dairies require an enormous amount of water for their cows and daily operation, and this will affect my well located at 350 Burke Dr., Wellington, NV. If I lose the water for my crops and cows then I will be out of business. My irrigation well dropped 30 feet this year (2013).
3. I have owned my ranch since 1989 and had quite a few artesian wells that have dried up due to drought in the last few years.
4. I previously experienced a loss of water level on property in Merced, CA when the Merced Irrigation District turned on a back-up well within ¼ mile of my well, causing a decline in the water level at 80 feet such that I needed to drill a new well to 340 feet. Approval of the water right may exacerbate current water problems.

### IX.

Applications 83121, 83122 and 83123 were timely protested by Marshall Todd on grounds summarized as follows:<sup>1,2,3</sup>

1. The new period of use will allow diversion from November 1 to April 1 when the aquifer normally recharges.
2. We are in drought conditions with no end in sight.
3. Water rights in the valley are already over allocated and the water table is dropping.
4. Changing the use to commercial will start down a slippery slope to move additional water to the point of diversion for use at the Smith Valley Farms project, which will require an enormous amount of water 365 days per year.

### X.

Applicant timely filed an answer to the protests, summarized as follows:<sup>1,2,3</sup>

1. Irrigation or Stockwater to Commercial:
  - a. Dairy is agricultural.
  - b. Commercial business is how applications for dairies are filed with the State Engineer.
  - c. The change in manner of use will not conflict with protectable interests or existing rights nor will it be detrimental to the public interest.
2. Amount of water to be changed:
  - a. The maximum combined total of water to be changed is 228.97 acre-feet annually.
  - b. The estimated water requirement from AGPROfessionals, LLC is based on an analysis of how the dairy is being designed and on university publications.
  - c. This estimate is for 184 afa and a maximum flow rate of 0.27 cfs, and not 2,500 afa listed in the protests.
  - d. If additional water is needed, additional water right applications will be filed allowing for public review and input.

- e. It is not an unreasonable amount of water for a commercial dairy farm, and it has already been appropriated in the basin.
  - f. The proposed change will not conflict with protectable interests or existing rights nor will it be detrimental to the public interest.
3. Change in period of use and aquifer recharge:
    - a. The Applicant does not believe the small amount of water that will be used in the non-irrigation season will affect aquifer recharge or cause unreasonable lowering of the water table.
    - b. The proposed change will not conflict with protectable interests or existing rights nor will it be detrimental to the public interest.
  4. Aquifer lowering affecting existing wells:
    - a. The maximum combined total of water to be changed is 228.97 acre-feet annually, and it has already been appropriated in the basin.
    - b. According to NDWR water level data for wells within 1.5 miles of the point of diversion indicate that since 2009, the levels have been rising or leveling off.
    - c. Will not cause unreasonable lowering of the water table.
    - d. Will not conflict with protectable interests or existing rights or be detrimental to the public interest.

### **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.**

### **MANNER OF USE AND SIZE OF PROJECT**

Protestants claim that the dairy has applied for 1,200 afa<sup>4</sup> and this is only a fraction of the amount needed for 6,400 head of cattle. The applications were protested, in part, on the grounds that the manner of use is being changed from irrigation to commercial purposes. The Protestants argue that this change will cause an increase in the amount of water being diverted from the groundwater basin. Protestant Glen Peters alleges that there is no indication of the amount of water the Applicant will need to support the Smith Valley Dairy Farms.

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<sup>4</sup> The Thomas L. Sherwood protest stated 144 afa, but it is otherwise identical to the other protests with this issue. See File No. 83121, official records in the Office of the State Engineer.

The Applicant is seeking to change the point of diversion, manner of use and place of use of water rights already appropriated in the groundwater basin. The Applicant filed a water usage estimate prepared by the company that is designing the dairy, as part of the applications. It included estimates for the water required for drinking consumption, washing and cooling. It also included a recycling component. The estimate was that 184 afa and 0.27 cfs were required for meeting the needs of operating a dairy with 4,256 head of cattle.<sup>1</sup>

Applications 83121 and 83122 are changing base rights that have a supplemental relationship. When groundwater from a specific well, or point of diversion, is used as the sole source for a place of use, it is commonly referred to as a "stand-alone" right. When used in combination with groundwater from another point of diversion, the right is considered "supplemental," meaning that the groundwater right supplements, or is supplemented by, water from another source used on the same place of use. Thus, it is expected that supplemental groundwater rights will not be used to their full allocation, since they are limited as a group to a total combined annual duty.

Application 83121 seeks to remove 54.033 acres from irrigation under Permit 16628, Certificate 5317, which at 2.5 acre-feet per acre per season is 135.083 acre-feet per season (afs). Application 83122 seeks to remove 56.033 acres from irrigation under Permit 18368, Certificate 5689, which at 4 acre-feet per acre per season is 224.132 afs. The acreage sought to be stripped by Application 83121 is included in the acreage sought to be stripped by Application 83122. Thus, the total combined duty to be removed from irrigation under these base rights is 224.132 afs.<sup>1,2</sup>

The State Engineer may consider the consumptive use of a water right and the consumptive use of a proposed beneficial use of water in determining whether a proposed change in the point of diversion, manner of use or place of use complies with the provisions of NRS § 533.370(2).<sup>5</sup> The cultural maps for these base right certificates indicate that the cultivated crops were alfalfa and grain.<sup>6</sup> In the Smith Valley Hydrographic Basin, the Net Irrigation Water Requirement (NIWR) for alfalfa is estimated at 3.1 acre-feet per acre of land irrigated "for pristine crop conditions under full water supply and should be considered the

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<sup>5</sup> NRS § 533.3703.

<sup>6</sup> File Nos. 16628 and 18368, official records in the Office of the State Engineer.

maximum.”<sup>7</sup> The value of the consumptive portion that was placed to beneficial use can be estimated as the number of acres of land irrigated multiplied by the NIWR, which in this case is the product of 56.033 acres and 3.1 acre-feet per acre being 173.702 afs.

Application 83123 seeks to change Permit 12305, Certificate 3679, from stockwater use to commercial use for the same project as Applications 83121 and 83122. Certificate 3679 was issued for 0.0067 cfs. The diversion rate can be converted to an annual duty by assuming constant flow over the entire year; thus, 0.0067 cfs expands to a maximum duty of 4.85 afa.

The State Engineer finds that the applications do not seek to appropriate additional groundwater from the Smith Valley Hydrographic Basin and that the proposed change applications will not increase the groundwater demand in the basin.

The State Engineer finds that, after a consumptive use reduction, Applications 83121 and 83122 have a total combined duty of 173.702 afa and that Application 83123 has a duty of 4.85 afa; therefore, the total duty allowed for the project from these change applications would be 178.552 afa, which will not be an increase in groundwater demand due to the change in manner of use to commercial purposes. The State Engineer finds that this duty is a substantial portion (about 97%) of the water estimated for full production at the dairy.

### III.

#### WATER LEVELS AND EFFECT ON EXISTING WATER RIGHTS

Applications 83121, 83122 and 83123 were protested in part on the grounds that the proposed change in point of diversion would adversely affect the Protestants' irrigation or domestic wells. Protestant Hunewill Land & Livestock Company alleges that the water level drop will require a larger, deeper motor to pump the same volume of water. Protestant Glen Peters alleges that the large amount of water withdrawn will affect their well at 350 Burke Dr.

Every permit issued by the State Engineer is conditioned on permit terms that govern the appropriation of water. Among the terms applied to underground permits is the condition that the approval of the permit will allow for a reasonable lowering of the static water level pursuant to NRS § 534.110(4).

Division personnel reviewed available data within the vicinity of the proposed change applications and conducted an analysis to evaluate the Protestants' concern. A report filed in 83121 is a standard analysis using the Theis Equation. Available data used included well log

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<sup>7</sup> *Evapotranspiration and Net Irrigation Water Requirements for Nevada*, Huntington and Allen, 2010, available online at [http://water.nv.gov/mapping/et/et\\_general.cfm](http://water.nv.gov/mapping/et/et_general.cfm).

records, historic water levels, pump tests, local geology and associated measured or computed aquifer properties. Simulated drawdown plots were developed for pumping 179 afa at the proposed point of diversion and for reduced pumping at the existing points of diversion totaling 179 afa. Although the pumping at the original points of diversion could total up to 229 afa, the more conservative approach to simulating the effect of drawdown would be to consider secondary recharge from irrigation at the place of use; hence, the value use for calculating the recovery effect is 179 afa. Using a range of transmissivity values based on information in well driller reports for wells in the area, three cases were evaluated. The following table shows the simulated drawdown based on an average of the three cases for each of the wells in the area of concern:

**Simulated Net Drawdown at Wells of Concern**

Owner	Application No. *	Well Log No. *	Simulated Net Drawdown (ft)	
			10 years	100 years
Simmons domestic	90 Jessen Road		0.8	0.9
Ely domestic		82778	1.2	1.3
Sherwood domestic		74814	0.0	0.0
Hunewill irrigation	18804	31886	4.6	5.0
Wojciak domestic		97115	0.8	0.8
Jones domestic		74813	0.7	0.8
Deckard domestic	297 Burke Drive		1.5	1.7
Peters domestic		48919	0.9	1.0
Peters domestic		116095	0.3	0.4
Peters irrigation	16798	41853	1.2	1.4
Lumbard domestic	265 Burke Drive		1.3	1.4
*Locations based on stated address of protestant or on description of well/point of diversion in NDWR database.				

The State Engineer has determined through examination of the records in the Office of the State Engineer, that the closest point of diversion is separated from the Applicant's proposed point of diversion by approximately 1,200 feet (see *Hunewill irrigation* in table above)<sup>8</sup> and that the nearest domestic wells are between about 2,000 and 2,300 feet away.<sup>9</sup> The well described by Protestant Peters is located approximately 8,500 feet to the northeast of the Applicant's proposed

<sup>8</sup> Nevada Division of Water Resources' Water Rights Database, April 28, 2014, official records in the Office of the State Engineer.

<sup>9</sup> Nevada Division of Water Resources' Well Log Database, April 28, 2014, official records in the Office of the State Engineer.

point of diversion<sup>10</sup> and the nearest irrigation well shown in the records of the Office of the State Engineer as being held by Protestant Peters is approximately 5,200 feet to the east of the proposed point of diversion (see *Peters irrigation* in table above).<sup>11</sup> Based upon the results of this analysis, the State Engineer finds that the approval of Applications 83121, 83122 and 83123 will not cause water level declines that would be considered unreasonable.

#### IV.

#### DROUGHT AND AQUIFER RECHARGE

Protestants allege that the proposed change would adversely affect the aquifer, especially due to the severe drought which is preventing the aquifer from recharging.

Water level measurements conducted by the State Engineer's Office indicate that the static water levels in wells near the proposed points of diversion declined overall from the early-1960s to present. Rising hydrographs tend to correspond to periods of higher surface water availability and lower pumpage, and vice-versa.<sup>12</sup>

The State Engineer finds that the change in point of diversion and manner of use will not exacerbate drought conditions.

#### V.

#### PERIOD OF USE AND AQUIFER RECHARGE

Protestants also allege that the period of use change will prevent recovery of the aquifer during the non-irrigation season through recharge from rain, snow melt and the Walker River, which will cause serious depletion of the aquifer and result in domestic wells going dry.

A change from seasonal to annual use will spread the diversion of water out over the year. Rather than larger diversions over a shorter period of time, the diversions will be smaller over a longer period of time. This change in timing of pumpage will not increase cumulative drawdown, and it will not prevent aquifer recharge.

The State Engineer finds that the change in the period of use will not detrimentally affect recharge to the aquifer.

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<sup>10</sup> File No. 13344, official records in the Office of the State Engineer.

<sup>11</sup> File No. 16798, official records in the Office of the State Engineer.

<sup>12</sup> Nevada Division of Water Resources' Water Level Database, April 18, 2014, official records in the Office of the State Engineer, available on-line at <http://water.nv.gov/data/waterlevel>.

## VI.

### CHANGE IN POINTS OF DIVERSION

Application 83122 was protested by Charles Russell Jones, Robert A. Lombard, Gerald K. Simmons, Frank and Linda Ely, Steven Deckard, Alan J. Wojciak and Thomas L. Sherwood on grounds that the application seeks to change the point of diversion from the southern portion of the basin to the northern portion of the basin, and that historically, water has not been allowed to be moved across that boundary line, which is documented in Water Resources Bulletin No. 43.<sup>2</sup>

In Water Resources Bulletin No. 43, Rush and Schroer describe a "groundwater divide" that separates the valley fill reservoir into southern and northern flow systems. The southern flow system drains toward the West Walker River and the northern flow system drains toward and terminates at Artesia Lake. The crest of the flow divide is approximately 40 feet higher than the Walker River, and approximately 200 feet higher than Artesia Lake. The distance between the Walker River and Artesia Lake is approximately 8 miles.<sup>13</sup>

The divide is not a physical barrier, and its exact location is not fixed. The regional potentiometric gradient mapped by Rush and Schroer near the divide is roughly 10 feet per mile, which is much lower than the localized fluctuation in groundwater levels due to pumpage and recharge. Or put more simply, the line moves depending on how much water is entering or leaving the ground near the line.

In this proposed change, the locations of the existing and proposed points of diversion are either north of, or within 0.2 miles of the divide drawn by Rush and Schroer in the 1970s. While the southernmost existing point of diversion does fall approximately 1,000 feet south of the divide as drawn, the potentiometric gradient defined by Rush and Schroer indicates a northerly, not southerly, flow at that location.<sup>14</sup>

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<sup>13</sup> F.E. Rush and C.V. Schroer, *Hydrology of Smith Valley, Nevada, with Special Reference to the Water-Use Period, 1953-72*, Water Resources Bulletin No. 43, (Department of Conservation and Natural Resources, Division of Water Resources and U.S. Department of Interior, Geological Survey), p. 13, 1976.

<sup>14</sup> F.E. Rush and C.V. Schroer, *Hydrology of Smith Valley, Nevada, with Special Reference to the Water-Use Period, 1953-72*, Water Resources Bulletin No. 43, (Department of Conservation and Natural Resources, Division of Water Resources and U.S. Department of Interior, Geological Survey), plate 2, 1976.

The State Engineer finds that the proposed change is fully within the Smith Valley administrative groundwater basin and will not measurably impact the groundwater divide between the southern and northern flow systems.

## VII.

### FORFEITURE AND ABANDONMENT

Application 83123 was protested in part on grounds that the well has not been used for many years and thus the permit has expired.<sup>3</sup> The base right for Application 83123 is Permit 12305, Certificate 3679. This water right is not temporary in nature, and cannot “expire,” but it can be subject to forfeiture or abandonment.<sup>15</sup>

Abandonment is a question of fact to be determined from all the surrounding circumstances, and an intention to forsake the water right is a necessary element. In the case of Permit 12305, Certificate 3679, the Applicant has filed a change application to move the point of diversion to a location on the Applicant’s property as a portion of the water rights required for their commercial dairy. This is evidence that the Applicant does not intend to abandon the water right. Further, there is no evidence in the file that their predecessors in interest intended to abandon the water right.

Nevada Revised Statute § 534.090 provides that after a certificate is issued on a permit, failure for five successive years to beneficially use the underground water for the purpose for which the right was granted works a forfeiture to the extent of nonuse. After four consecutive years of nonuse, the State Engineer is required to notice the water right holder that they have one year in which to place the water back to beneficial use. A review of File No. 12305 did not reveal such a notification was made.<sup>10</sup> The Division of Water Resources conducts annual pumpage inventories in the Smith Valley Hydrographic Basin. For the years 1994 through 2003, there is only one entry for 1994 that shows a “0.0” value for pumping.<sup>16</sup> For the years 2005 through 2011, only the years 2010 and 2011 have an entry of “0.00” for amount of pumping.<sup>17</sup> There is insufficient evidence in the records of the Office of the State Engineer to initiate the working of a forfeiture.

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<sup>15</sup> NRS § 534.090.

<sup>16</sup> *Estimated Annual Ground-Water Pumpage, 1994-2003, Smith Valley and Mason Valley, Lyon County, Nevada*, Department of Conservation and Natural Resources, Division of Water Resources, p. 30, 2003.

<sup>17</sup> *Smith Valley, Hydrographic Basin 9-107 Groundwater Pumpage Inventory Calendar Year 2011*, Department of Conservation and Natural Resources, Division of Water Resources, p. 25, 2011.

A review of File No. 12305, shows that the water right is certificated and in good standing at this time.<sup>18</sup> The State Engineer finds that the water sought for change under Application 83123, represented by a portion of Permit 12305, Certificate 3679, is currently in good standing and is not subject to abandonment or forfeiture.

### VIII.

#### **MORATORIUM ON NEW AGRICULTURAL OR COMMERCIAL WELLS**

Protestants allege that a new well must be drilled to place the water rights to use and that there is a "moratorium on drilling a new [agricultural] well or a commercial well in Nevada."<sup>1</sup>

State Engineer's Order No. 245 was issued June 27, 1960, designating and describing a portion of the Smith Valley Artesian Basin, which includes the locations of the existing and proposed points of diversion. Subsequent orders of the State Engineer required the installation of measuring devices pursuant to permit terms,<sup>19</sup> curtailed new appropriations with certain exceptions,<sup>20</sup> required the installation of totalizing meters<sup>21</sup> and extended the designated area to include the entire hydrographic basin.<sup>22</sup> None of these orders prohibit the drilling of new wells for any purpose, provided that any wells are drilled pursuant to the Nevada Revised Statutes, Nevada Administrative Code and any permit terms.

There is no statute, regulation or State Engineer order that has created a moratorium on drilling a new agricultural or commercial well in Nevada. The State Engineer finds that nothing prohibits the drilling of new wells in the Smith Valley Hydrographic Basin provided that all statutes, regulations, and State Engineer orders, rulings and permit terms are adhered to as required under Nevada water law.

### IX.

#### **FUTURE APPLICATIONS**

The State Engineer can only consider and take action on the applications before him, and not on hypothetical future applications. Any new applications filed with the Office of the State Engineer will require the publication and protest period pursuant to Nevada water law. The State

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<sup>18</sup> File No. 12305, official records in the Office of the State Engineer.

<sup>19</sup> State Engineer's Order No. 253.

<sup>20</sup> State Engineer's Order No. 1126.

<sup>21</sup> State Engineer's Order No. 1159.

<sup>22</sup> State Engineer's Order No. 1177.

Engineer finds that the protest issues regarding future water applications or appropriations are not ripe; therefore, these protest issues are dismissed.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>23</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>24</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.

The potential drawdown will not unreasonably lower the static water level, the change to annual use from seasonal use will not affect aquifer recharge and the base water rights are in good standing; therefore, the State Engineer concludes that the change in the points of diversion and the change in the manner of use will not conflict with existing rights or protectable interests in existing domestic wells.

#### IV.

Applications 83121, 83122 and 83123 propose to change existing water rights that have already appropriated groundwater; thus, the proposed change will not add to the committed resource in the Smith Valley Hydrographic Basin. The change of the points of diversion under the existing water rights to the proposed point of diversion under the applications will not move a point of diversion from a distinct sub-basin to another. The State Engineer concludes that by considering the consumptive use of the existing and proposed manners of use and the effect of pumping at the existing and proposed points of diversion, the proposed change will not cause an additional appropriation of water nor threaten to prove detrimental to the public interest.

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<sup>23</sup> NRS Chapters 533 and 534.

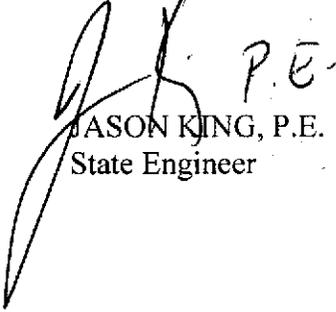
<sup>24</sup> NRS § 533.370(2).

**RULING**

The protests to Applications 83121, 83122 and 83123 are hereby overruled, and Applications 83121, 83122 and 83123 are approved subject to:

1. being limited to the consumptive use portion of the base rights,
2. existing rights, and
3. payment of the statutory fees.

Respectfully Submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 3rd day of  
June, 2014.