

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

IN THE MATTER OF APPLICATION 82017)
FILED TO CHANGE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 65331)
WITHIN THE LOVELOCK AREA - OREANA)
SUBAREA HYDROGRAPHIC BASIN (73A),)
PERSHING COUNTY, NEVADA.)

RULING

#6293

GENERAL

I.

Application 82017 was filed on July 19, 2012, by Bruce Ian Luke Revocable Living Trust, Dated 12-3-97, and Lesley Rice Luke Revocable Living Trust, Dated 12-3-97, to change the point of diversion, place and manner of use of 0.007 cubic feet per second not to exceed 2.0 acre-feet annually (afa), from an underground source, a portion of water previously appropriated under Permit 65331. The proposed manner of use is commercial and domestic whereas the existing manner of use is quasi-municipal. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 27, T.30N., R.33E., M.D.B.&M., and the existing point of diversion is located within the SE¼ NE¼ of Section 17, T.30N., R.33E., M.D.B.&M. The proposed place of use is described as being located within a portion of the NE¼ NE¼ of Section 27, T.30N., R.33E., M.D.B.&M., and the existing place of use is located within Section 17, T.30N., R.33E., M.D.B.&M.¹

II.

Application 82017 was timely protested by the Lovelock Meadows Water District (District) on grounds as summarized below:¹

1. The proposed water right application will unreasonably lower static water levels in the basin and adversely affect the District's existing rights.
2. There is no un-appropriated groundwater available in the Oreana basin.
3. The District is a 318 entity, which provides municipal water service to the Lovelock Valley and City of Lovelock. The proposed use and underlying discharge may very

¹ File No. 82017, official records in the Office of the State Engineer.

well degrade the District's permits, and the application would harm the public interest by potentially requiring increased fees for the District's constituents to compensate the loss of current or expected revenue.

4. State Engineer's Order Nos. 370 and 1079 declare municipal use as a preferred use and no permits to appropriate groundwater for irrigation purposes should be issued. All applications, including change applications for any use other than municipal use should be denied and applications requesting a preferred use but are intended for a use that is not a preferred use, for example irrigation, should be denied not only because of the impacts to limited available water resources but because of the prospective manner of use that is not in compliance with previous orders.
5. The District encourages that the State Engineer provide temporary permitting to allow for new unpermitted water use within basins 72, 73 and 73a instead of granting permanent water use. Temporary projects will provide additional ground withdrawals to the aquifer so that impacts can be observed.

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 a water right application. The State Engineer finds that in the case of change Application 82017 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 in this matter is not required.

II.

Change Application 82017 is the result of a compliance enforcement action involving the Applicant, which was previously addressed through the State Engineer's Office. In April 2012, a Request to Investigate Alleged Violation was filed in the Office of the State Engineer. The violation alleged was that the Applicant was diverting, impounding or using water for which no water right had been established; or, that the Applicant was violating terms or conditions of an unknown existing right.² On April 12, 2012, the Office of the State Engineer sent Notice of Alleged Violation, AV47, (Notice) to the Applicant advising the Applicant that the State

² Notice of Alleged Violation, AV47, dated April 12, 2012, File No. AV47, official records in the Office of the State Engineer.

Engineer's investigation determined the Applicant was diverting water from the domestic well on its property for a commercial orchard without the benefit of an appropriative water right.² The State Engineer's office advised the Applicant it could comply with the water law by acquiring sufficient water rights to account for its actual use of water and then take the necessary action to move the acquired water rights to its property.

By Quitclaim Deed dated May 25, 2012, the Applicant did acquire 2.0 afa of water appropriated under Permit 65331, and, on July 19, 2012, filed Application 82017 to change the Applicant's 2.0 afa portion of Permit 65331 to the property where the commercial activity is occurring.

The State Engineer finds by acquiring the 2.0 afa under Permit 65331 and filing change Application 82017, the Applicant complied with the Notice of Alleged Violation, AV47, as required by the Office of the State Engineer.

III.

The first two protest grounds go to availability of unappropriated water and lowering of the static water level. Application 82017 is an application to change water previously appropriated and accounted for in the Lovelock Valley - Oreana subarea. Application 82017 does not seek an additional appropriation of water and does not increase the groundwater demand in the basin; therefore, the State Engineer need not make a finding of unappropriated water. As well, as a condition for each appropriation of groundwater, NRS § 534.110(4) allows for a reasonable lowering of the static water level at the appropriator's point of diversion. Based upon the duty and location of the proposed point of diversion, the State Engineer finds that there will be no significant difference between pumping at the existing versus proposed point of diversion on the groundwater aquifer. Therefore, the State Engineer finds that the change application will not conflict with the District's existing rights.

IV.

Protestant argues that the proposed use and discharge may degrade its existing rights and that the public interest is harmed by a potential cost increase to compensate for the loss of current or expected revenue. As already found by the State Engineer above, the change application will not conflict with the District's existing rights. Further, it is unclear how a change in 2 afa of an existing right will allegedly cause the loss of current or expected revenue to Protestant. The State Engineer finds that this protest issue is too vague to find that harm to the public interest will result from the change proposed by this Application.

V.

Protestant next asserts that State Engineer Order Nos. 369 and 1079 should result in the denial of Application 82017.

By Order No. 369 dated February 25, 1969, the State Engineer designated the Lovelock Valley - Oreana subarea pursuant to NRS § 534.030 as a groundwater basin which the State Engineer considered to be in need of administration.³ The same day, in Order No. 370, the State Engineer issued a notice of curtailment and designated municipal use as a preferred use within the area described in the Order.⁴ Order No. 370 stated that no additional permits for irrigation would be issued within the described area, but stated that the Order did not apply to applications filed prior to February 25, 1969.

In Order No. 1079 issued May 17, 1993, the area of curtailment and designation of preferred municipal use was expanded to areas described in the Order.⁵

The State Engineer finds this protest ground must be overruled for numerous reasons. First, Application 82017 does not propose irrigation as its manner of use. The existing manner of use is quasi-municipal and the proposed manner of use is commercial and domestic. Order Nos. 370 and 1079 curtail the granting of new irrigation rights.

Second, the lineage of the base water rights demonstrate that the original water right was issued prior to the issuance of Orders No. 370 and 1079. Application 82017 seeks to change a portion of Permit 65331. Permit 65331 changed a portion of Permit 19668, Certificate 6945. Application (Permit) 19668 was filed on March 14, 1961, and was issued as an irrigation right. The filing of Application 19668 on March 14, 1961, came years before the issuance of State Engineer Order Nos. 369, 370 or 1079. As the Orders stated, they applied prospectively and did not apply retroactively to Permit 19668 filed in 1961. For that reason, later change applications off of Permit 19668, including Permit 65331 and now Application 82017 are beyond the curtailment limitation of Orders No. 370 and 1079 where the original base right was filed prior to issuance of those Orders.

³ State Engineer's Order No. 369, dated February 25, 1969, official records in the Office of the State Engineer.

⁴ State Engineer's Order No. 370, dated February 25, 1969, official records in the Office of the State Engineer.

⁵ State Engineer's Order No. 1079, dated May 17, 1993, official records in the Office of the State Engineer.

Third, although prior Orders designated municipal as a preferred use, an existing preferred designation in this case must also be counterbalanced against the public interest of a water use complying with Nevada law. The State Engineer finds it is in the public interest for the Applicant to comply with Nevada law by acquiring the necessary water rights to support its commercial activity. The State Engineer finds this protest ground to be without merit and it is overruled.

VI.

Lastly, the Protestant encourages the State Engineer to provide temporary permitting to allow new unpermitted uses instead of granting permanent water rights. The State Engineer finds that Application 82017 was not filed as a temporary application and its use is not temporary on its face; therefore, this protest ground has no application to the matter under consideration and this protest ground is overruled.

CONCLUSIONS OF LAW

I.

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

II.

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

- 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 State Engineer concludes that the approval of Application 82017 will not conflict with the District's existing rights and will not threaten to prove detrimental to the public interest.

⁶ NRS Chapters 533 and 534.

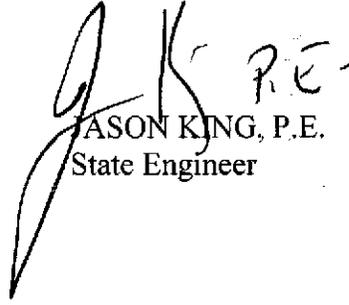
⁷ NRS § 533.370(2).

RULING

The protest is overruled and Application 82017 is hereby approved subject to:

1. Existing rights; and
2. Payment of the statutory fees.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 22nd day of
September, 2014.