

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

IN THE MATTER OF APPLICATIONS 80633 AND )  
82239 FILED TO APPROPRIATE THE WATERS )  
OF AN UNDERGROUND SOURCE WITHIN THE )  
LOVELOCK VALLEY HYDROGRAPHIC BASIN )  
(73), PERSHING COUNTY, NEVADA. )

**RULING**  
**#6310**

**GENERAL**

**I.**

Application 80633 was filed by Woodie Bell on February 28, 2011, to appropriate 0.012 cubic feet per second (cfs) of groundwater for stockwatering purposes (345 head of cattle). The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18, T.30N., R.32E., M.D.B.&M. The proposed place of use is described as being located within a portion of the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18, SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 20 and NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 21, all in T.30N., R.32E., M.D.B.&M.<sup>1</sup>

**II.**

Application 82239 was filed on October 29, 2012, by Woodie Bell to appropriate 0.013 cfs of water from an underground source to water 345 head of cattle from November 1<sup>st</sup> through May 1<sup>st</sup> of each year. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 32, T.30N., R.32E., M.D.B.&M. The proposed place of use is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 32 and the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 33, T.30N., R.32E., M.D.B.&M.<sup>2</sup>

**III.**

Application 82239 was timely protested by Lovelock Meadows Water District on grounds as summarized below:<sup>1</sup>

1. The proposed water right application(s) 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.

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<sup>1</sup> File No. 80633, official records in the Office of the State Engineer.

<sup>2</sup> File No. 82239, official records in the Office of the State Engineer.

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 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 the preferred use and no permits to appropriate groundwater for irrigation purposes should be issued in Basin 73A, Oreana subarea. 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 the 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 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 remarks section of Application 80633 indicates that the former grazing allotment holder used water under Permit 51212, but that Mr. Bell is now the holder of the allotment and "wants 100% ownership of this existing project." Per the U.S. Bureau of Land Management, Woodie Bell is the current allotment holder of the Rye Patch Allotment. Permit 51212,

Certificate 12974 was issued on August 26, 1991, to the U.S. Bureau of Land Management and R.J.B. Development Company in the amount of 0.012 cfs or sufficient to water 345 head of cattle and 35 wild horses. The State Engineer finds that the granting of a new water right in the name of Mr. Bell does not bestow upon him "ownership of [the] project"; it allows him to use water from that point of diversion. The State Engineer finds that all the points of diversion and places of use are within the Rye Patch Allotment, that Permit 51212, Certificate 12974, was issued for the same 345 cattle that Mr. Bell is applying for under Applications 80633 and 82239. The State Engineer finds that no additional duty of water will be granted under these two applications, but rather they will be issued for a total combined duty with Permit 51212, Certificate 12974; therefore, there is no additional draw on the resource.

### III.

The first two protest grounds concern availability of unappropriated water and lowering of the static water level. Applications 80633 and 82239 are applications to appropriate water in Lovelock Valley. As already found above, these Applications do not seek any additional duty of water; 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 difference between the amount of water currently allowed to be pumped under Permit 51212, Certificate 12974, and the amount of water allowed to be pumped with the approval of Applications 80633 and 82239. Therefore, the State Engineer finds that the new appropriation will not conflict with the Protestant's existing rights.

### IV.

The 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, these applications will not conflict with the Protestant's existing rights. Further, it is unclear how a new appropriation of water that does not increase the duty in the basin will allegedly cause the loss of current or expected revenue to the Protestant. The State Engineer finds that this protest issue is too vague to find that harm to the public interest will result from the use proposed by these applications.

V.

The Protestant next asserts that State Engineer Order No. 370 and 1079 should result in the denial of Application 82239.

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 that the State Engineer considered to be in need of administration.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

The point of diversion of Application 82239 is located outside the limits of both Order Nos. 370 and 1079; therefore, the State Engineer finds this protest ground to be without merit, and 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 82239 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 is overruled.

**CONCLUSIONS OF LAW**

I.

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

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

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

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

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

**II.**

The State Engineer is prohibited by law from granting a permit under an application 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.**

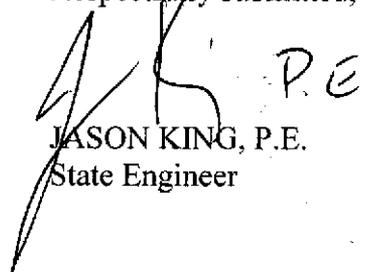
The State Engineer concludes that granting of Applications 80633 and 82239 for a total combined duty, together with Permit 51212, Certificate 12974, not to exceed 8.51 afa, or sufficient to water 345 head of cattle and 35 wild horses, will not conflict with existing rights or threaten to prove detrimental to the public interest.

**RULING**

The protest is overruled and Applications 80633 and 82239 are hereby approved and subject to:

- 1. Total combined duty of Permit 51212, Certificate 12974, and Applications 80633 and 82239 shall not exceed 8.51 afa, or sufficient to water 345 head of cattle and 35 wild horses; and
- 2. Existing rights; and
- 3. Payment of the statutory permit fees.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 15th day of  
April 2015

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<sup>7</sup> NRS § 533.370(2).