

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

IN THE MATTER OF APPLICATION 71202)
FILED TO APPROPRIATE WATERS OF)
AN UNDERGROUND SOURCE WITHIN)
THE ROCK VALLEY HYDROGRAPHIC)
BASIN (226) AND APPLICATION 71204)
FILED TO APPROPRIATE WATERS OF)
AN UNDERGROUND SOURCE WITHIN)
THE FORTY MILE CANYON – JACKASS)
FLATS HYDROGRAPHIC BASIN (227A),)
NYE COUNTY, NEVADA.)

RULING
#6316

GENERAL

I.

Application 71202 was filed on May 11, 2004, by Thomas S. Buqo, later assigned to Nye County, to appropriate 11.5 cubic feet per second (cfs) of water from an underground source for quasi-municipal purposes. The proposed point of diversion is described as being located within the SW¹/₄ NW¹/₄ of Section 26, T.14S., R.51E., M.D.B.&M. The proposed place of use is described as being the SW¹/₄ NW¹/₄ of Section 26, T.14S., R.51E., M.D.B.&M., and Item 12 of the Application states that initial activities will be limited to monitoring and testing and that an application will be filed to change the place of use to the towns of Amargosa Valley or Pahrump as interbasin transfers.¹

II.

Application 71204 was filed on May 11, 2004, by Thomas S. Buqo, later assigned to Nye County, to appropriate 5.0 cfs from an underground source for quasi-municipal purposes. The proposed point of diversion is described as being located within the SW¹/₄ NE¹/₄ of Section 6, T.14S., R.50E., M.D.B.&M. The proposed place of use is described as being the SW¹/₄ NE¹/₄ of Section 6, T.14S., R.50E., M.D.B.&M., and Item 12 of the Application states that initial activities will be limited to monitoring and testing and that an application will be filed to change the place of use to the towns of Amargosa Valley or Pahrump as interbasin transfers.²

¹ File No. 71202, official records in the Office of the State Engineer.

² File No. 71204, official records in the Office of the State Engineer.

III.

Application 71202 was timely protested by the Estate of D. E. De Witt and Application 71204 was timely protested by Geneerco, Inc. on the grounds summarized as follows:^{1,2}

- Our water supply will be directly threatened.
- Not enough recharge into the aquifer to account for the amount of water sought in this application.
- Water level decline will result in the expense of deepening existing wells.

IV.

Applications 71202 and 71204 were timely protested by the Nevada Water Committee on the grounds that the Applicant has not demonstrated that the necessary permissions can be obtained from the United States to develop, transport and apply the water for beneficial use, that the granting of the applications would be detrimental to the public interest because they would interfere with the purpose for which the federal lands are managed under federal statutes, and several other issues not addressed in this ruling.^{1,2}

V.

Applications 71202 and 71204 were timely protested by the United States Fish and Wildlife Service on the grounds as follows:^{1,2}

- Water is not...available [for] appropriation in the manner described.
- Granting of these applications will cause injury to Service-owned senior water rights for water on the Ash Meadows NWR [National Wildlife Refuge].
- Granting of these applications will threaten or damage habitat for species that are endangered, threatened, or considered for future listing under the Endangered Species Act and, therefore, is not in the public interest.

VI.

Applications 71202 and 71204 were timely protested by the United States Department of Energy, National Nuclear Security Administration on the grounds that the points of diversion are on property owned by the U.S. Department of Energy and that the Applicant will not be able to prove up on the works of diversion, that the Applicant cannot physically deliver the water from the proposed point of diversion to the place of use, that the Applicant does not own or otherwise have access to the points of diversion and several other issues not addressed in this ruling.^{1,2}

VII.

Applications 71202 and 71204 were timely protested by the United States Department of the Interior, National Park Service on the grounds summarized as follows: ^{1,2}

- There is no unappropriated water available.
- The approval and development of these applications will impair the senior water rights of the United States.
- The public interest would not be served by granting the applications.

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.

A water right application is filed to request an appropriation of water from a specific point of diversion and to be used for a specific purpose within a well defined place of use. Applications 71202 and 71204 both contain a statement under Item 12 of the applications that initial activities will be limited to monitoring and testing and that an application will be filed to change the place of use to the towns of Amargosa Valley or Pahrump as interbasin transfers. The State Engineer finds that the Applicant has inaccurately stated on the applications the proposed place of use.

III.

Prior to the approval of a water right application, it must be determined that there is a reasonable expectation that the water so appropriated would be placed to its proposed beneficial use. The applications propose a manner of use for quasi-municipal, but the communities indicated for this proposed use are not within the places of use described in the applications. Additionally, an examination of land ownership records in the Office of the State Engineer indicate that the points of diversion for each of the proposed applications are located on lands withdrawn from public use for the Nevada Test Site, which is controlled by the United States

Government. Protests submitted by the lawfully recognized stewards of the land in question indicate that they have not authorized access to the points of diversion nor the development of any water infrastructure at the points of diversion. The State Engineer finds that the proposed points of diversion for the applications are located on land which the Applicant does not own, control, or have access to. The State Engineer finds that since the Applicant does not have control of the proposed points of diversion, it is highly unlikely it can obtain permission to access the proposed points of diversion. The State Engineer finds the ability to divert and use the water as proposed under the subject applications does not exist, and the proposed manner of use is not consistent with the places of use requested in the applications. For these reasons, the State Engineer finds that there is no reasonable expectation that beneficial use will occur under any permit granted under the subject applications.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁴

- 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.

A water right application is filed to request an appropriation of water from a specific point of diversion to be used for a specific purpose within a well-defined place of use. Applications 71202 and 71204 inaccurately describe the proposed places of use. The State Engineer concludes that to approve water right applications that do not properly identify the proposed place of use would threaten to prove detrimental to the public interest.

³ NRS 533 and 534.

⁴ NRS § 533.370(2).

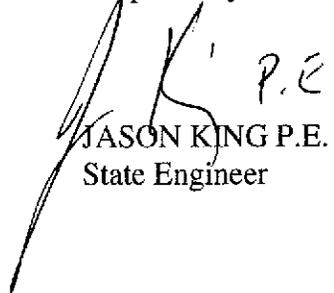
IV.

Applications 71202 and 71204 request appropriations from points of diversion on lands that have been withdrawn from the public use. The absence of the land steward's consent to the Applicant's access and development of the water sought under these applications and the inconsistent manners and places of use under these applications eliminate the expectation that any water appropriated under these applications will ever be placed to beneficial use. The State Engineer concludes that under these circumstances, approval of the subject applications would threaten to prove detrimental to the public interest.

RULING

The protests are upheld in part and Applications 71202 and 71204 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the remaining protest issues.

Respectfully submitted,



JASON KING P.E.
State Engineer

Dated this 27th day of
May, 2015.