

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

IN THE MATTER OF APPLICATION )  
72095 FILED TO CHANGE THE POINT )  
OF DIVERSION AND THE PLACE OF )  
USE OF A PORTION OF THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
PREVIOUSLY APPROPRIATED UNDER )  
PERMIT 64737 WITHIN THE AMARGOSA )  
DESERT HYDROGRAPHIC BASIN (230), )  
NYE COUNTY, NEVADA. )

RULING

**#5872**

I.

Application 72095 was filed on January 3, 2005, by the Olson Family Trust of 1990 to change the point of diversion and the place of use of 0.299 cubic feet per second, not to exceed 100.0 acre-feet annually, a portion of the underground water previously permitted for appropriation under Permit 64737. The proposed manner and place of use is described as being for irrigation and domestic purposes within the NW¼ SW¼ of Section 9, T.16S., R.49E., M.D.B.&M. The existing manner and place of use issued under Permit 64737 is for irrigation and domestic purposes within the SE¼ of Section 1, T.17S., R.48E., M.D.B.&M. If a permit was issued under this application, it would transfer the existing point of diversion, which is described as being within the NE¼ SE¼ of Section 1, T.17S., R.48E., M.D.B.&M., to a new well site located within the NW¼ SW¼ of Section 9, T.16S., R.49E., M.D.B.&M.<sup>1</sup>

II.

Application 72095 was timely protested by the United States Department of the Interior, National Park Service (NPS) on grounds that were summarized as follows:<sup>1</sup>

- A. The public interest will not be served if water and water related resources in the nationally important Death Valley

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<sup>1</sup> File No. 72095, official records in the Office of the State Engineer.

National Park, including Devil's Hole, are diminished or impaired as the result of the granting of this application.

- B. The appropriation proposed by this application at the new point of diversion, in combination with existing appropriations at that location will cause the water level at Devil's Hole to further decline, thereby impairing senior NPS water rights for Death Valley National Park.
- C. The amount of water granted under this change application should be limited to the amount that has been historically put to beneficial use. The public interest will not be served by granting a change application where a base permit is not in good standing and the basin is over-appropriated.

#### FINDINGS OF FACT

##### I.

Once a water right application has been timely protested, its progress through the State Engineer's permitting process is delayed until the protest issues are resolved. The Nevada Revised Statutes (NRS) provide the State Engineer with several options that can be used to resolve the protest issues. These can range from informal field investigations to extensive public hearings, all of which are intended to provide the State Engineer with sufficient information to gain a full understanding of the water right application and its associated protest. The NRS also places the decision as to the necessity of a public hearing with the State Engineer, who may forego the hearing process if the existing record of information is sufficient to address the issues at hand.<sup>2</sup> In the case of Application 72095, the State Engineer finds that there is no need to supplement the existing record with evidence and testimony received at a public hearing.

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<sup>2</sup> NRS § 533.365(3).

## II.

The NPS has for many years expressed a concern regarding the amount of underground water that is being appropriated from the Amargosa Desert Hydrographic Basin under permits and certificate issued by the State Engineer. Initially, the NPS focused its attention on water right applications that were requesting new appropriations of underground water. As the level of water related activities increased, the NPS eventually extended its protests to include applications filed to change existing water rights.<sup>3</sup>

One of the issues that the NPS has focused upon is the history of water use associated with the change application's base right. The term, "base right," refers to an existing water right that supports the subsequent change application. The NPS contends that Application 72095 should only be considered for the actual amount of water that was used under its base right, Permit 64737, prior to 2004. If no water was used during this period, the NPS requested that the State Engineer deny Application 72095.<sup>1</sup>

The State Engineer's water right process recognizes that a water right permit is developed in stages, each of which may require several years to complete. In the case of Permit 64737, the permittee was expected to drill and equip the well by December 2, 2002, with beneficial use to be achieved prior to December 2, 2007. The water right file maintained under Permit 64737 indicates that the Proof of Completion was timely filed on January 8, 2003, signifying that the well had been constructed and equipped for operation. The permittee was granted five years after the well was completed to achieve maximum irrigation of the 117 acres comprising the place of use.<sup>4</sup> As provided by the NRS, the permittee has requested an additional year past the December 2, 2007, deadline to achieve a beneficial use of the water.

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<sup>3</sup> Water Division of Water Resources Water Right Database, January 14, 2008, official records in the office of the State Engineer.

<sup>4</sup> File No. 64737, official records in the Office of the State Engineer.

Having timely filed the extension request, the permittee is in compliance with the State Engineer's permit terms and conditions, the State Engineer finds that Permit 64737 is in good standing and can be considered for the change proposed under Application 72095.

### III.

A similar protest issue was made by the NPS regarding the base right permit associated with Permit 64737. Here the NPS requested that the State Engineer limit the amount of water available for transfer to that amount historically used under Permit 20352, Certificate 5764. The history of water use under Permit 20352, Certificate 5764 is recorded in the Amargosa Valley pumpage inventory. Since 1983, representatives from the State Engineer's Las Vegas branch office have visited the points of diversion and places of use of most of the irrigation permits and certificates found within the Amargosa Valley. The purpose of these annual site inspections is to document the amount of land that has been irrigated under each of these water rights, from which an estimate of the basin wide ground-water pumpage can be derived.

If the record of water use specific to Permit 20352 is reviewed, it can be seen that this particular water right has a solid history of substantial water use for the 1991 through 2005 irrigation seasons.<sup>5</sup> As was the case with Permit 64737, there is no evidence found within the records of the State Engineer that Permit 20352, Certificate 5764 is out of compliance or in poor standing. The State Engineer finds that the abrogation chain linked to Application 72095 is free of non-use issues and that the full amount of water requested under Application 72095 can be considered for transfer.

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<sup>5</sup> Annual Amargosa Valley ground-water pumpage inventories, official records in the Office of the State Engineer.

#### IV.

Regarding the issue of existing rights, there has been much opposition by the NPS to change applications that would transfer existing water rights to points of diversion that are closer to their areas of concern. Within the Death Valley National Park, the NPS is responsible for the continued health of numerous spring sources, some of which are populated by threatened or endangered species. It is feared that, in some instances, the accumulative effect of water right transfers within the Armagosa Valley, will ultimately have a negative impact on the water levels found at these sources. Of particular concern is the decline of water levels that have been recorded at Devils' Hole, which is a detached unit of the Death Valley National Park.

While the effects that the appropriation of underground water may have on a spring source is not entirely a function of distance, it is useful to compare the locations of the existing point of diversions with those proposed under the subject applications as they relate to Devil's Hole. Once these well sites are plotted on the appropriate Map, it can be seen that the approval of Application 72095 would add an additional mile to the 13 miles that already separate the existing point of diversion from Devil's Hole.<sup>6</sup> Therefore, the State Engineer finds that this net gain in distance would appear to be a desirable transfer, in regard to a potential negative effect on Devil's Hole.

#### V.

The NPS also requests that the approval of the subject application be conditioned with a totalizing meter requirement, which is already a standard permit term for all change permits issued within the valley. The State Engineer finds that the permittee will be required to properly install and maintain a

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<sup>6</sup> Hydrographic Basin 230 Mapguide Map, official records in the office of the State Engineer.

water totalizing meter at the proposed point of diversion, should Application 72095 be approved.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>7</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>8</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 protectible 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 72095 requests a change in an existing ground-water permit that is currently considered to be in good standing. As a change application, its approval would not represent an additional appropriation of underground water from the Amargosa Desert Hydrographic basin. The State Engineer concludes that the issue of unappropriated water does not apply to the subject application.

#### IV.

The approval of Application 72095 will increase the distance that previously existed between the NPS' areas of concern and the point of diversion issued under Permit 64737. Additionally, as part of the application review process, a more localized analysis was made regarding those existing water right in the immediate

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<sup>7</sup> NRS chapters 533 and 534.

<sup>8</sup> NRS § 533.370(5).

area of the proposed point of diversion. This examination also supports the conclusion that the approval of Application 72095 will not have an adverse effect upon existing water rights.

V.

The State Engineer concludes that the approval of the change proposed under Application 72095 will not threaten to prove detrimental to the public interest.

RULING

The protest to Application 72095 is overruled and Application 72095 is hereby approved subject to existing water rights and the timely payment of the statutory filing fee.

Respectfully Submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/MB/jm

Dated this 30th day of  
June, 2008.