

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

IN THE MATTER OF APPLICATION 81619)
FILED TO CHANGE THE POINT OF)
DIVERSION OF AN UNDERGROUND)
SOURCE PREVIOUSLY APPROPRIATED)
UNDER PERMIT 64692 WITHIN THE)
TULE DESERT HYDROGRAPHIC BASIN)
(221), LINCOLN COUNTY, NEVADA.)

RULING

#6189

GENERAL

I.

Application 81619 was filed on February 28, 2012, by the Lincoln County Water District and Vidler Water Company, Inc. to change the point of diversion of 10.0 cubic feet per second of water (cfs), previously appropriated under Permit 64692 from an underground source for municipal purposes. The proposed place of use is described as being located within all of T.12S., R.71E., M.D.B.&M. and Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36, T.12S., R.70E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T.10S., R.69E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T.9S., R.69E., M.D.B.&M.¹

II.

Application 81619 was protested by the USDI National Park Service (NPS) on the following grounds as summarized below:

1. Natural discharge of groundwater by ET has not been observed to occur in the Tule Desert. Groundwater is believed to exit as subsurface outflow to the Virgin River Valley Hydrographic Basin (222). Consequently, groundwater withdrawals may reduce or eliminate a component of groundwater recharge to the Virgin River Valley. This could reduce the discharge of the Virgin River and/or springs at Lake Mead NRA.

¹ File No. 81619, official records in the Office of the State Engineer.

2. The perennial yield of the Tule Desert was originally estimated at 2,100 afa. The estimate was modified to 2,500 afa as a result of Ruling 5986. The current committed groundwater resources are currently reported to be about 5,003 afa. Based on these numbers, there is no water available for appropriation.
3. In 2002, the Nevada State Engineer issued Ruling 5181 for two water rights for 10 cfs each. The Ruling granted LCWD and Vidler 2,100 afa of water on the first application, which was equal to the original estimate of perennial yield. The balance of the first application was denied and the second application (64692) was held in abeyance. The State Engineer ruled that unless LCWD and Vidler can show that the annual water budget is greater than the earlier estimate of perennial yield, no new water rights would be issued.
4. In 2009, the Nevada State Engineer issued Ruling 5986 regarding the second water rights application that was held in abeyance under Ruling 5181. Ruling 5986 granted LCWD and Vidler 396 afa of water on the second application (64692), with the balance being denied. In Ruling 5986, the perennial yield was revised to 2,500 afa.
5. In May 2009, LCWD and Vidler appealed Ruling 5986 to the Seventh Judicial District Court, Case No. CV-0518009. In July 2009, LCWD and Vidler sued State Engineer Tracy Taylor and Acting State Engineer Jason King in the United States District Court, Case No. CV00392-LRH-VPC. On April 1, 2010, the parties settled the two lawsuits by entering into the *Settlement Agreement Among the State Engineer, State of Nevada, Tracy Taylor, P.E., Nevada State Engineer, Jason King P.E., Acting State Engineer, Lincoln County Water District and Vidler Water Company* (NDWR/Vidler&LCWD Settlement), "in order to avoid the expense and uncertainty of litigation." Under this settlement agreement, the State Engineer conditionally granted Application 64692 in the amount of 7,240 afa, with 2,900 afa available for use and the remainder subject to staged development. The total combined duty for Applications 64692 and 66932 shall not exceed 9,340 afa.
6. The groundwater perennial yield of the Virgin River Valley is recognized by the Nevada State Engineer to be 3,600 afa, which is consistent with estimates proposed in Reconnaissance Report No. 51. Committed groundwater resources in

the Virgin River Valley are estimated at 12,342. The committed resource exceeds the perennial yield by 8,742. Additional rights granted in Tule Desert, combined with committed and pending rights in the Virgin River, could reduce the Virgin River. The change sought moves the point of diversion closer to surface water and groundwater resources in the Virgin River Valley system, which could increase the impact on these water resources.

7. The aquifers underlying the Tule Desert are part of a regional, groundwater flow system that discharges a portion of its water through Paleozoic-aged carbonate rocks from several warm springs in Lake Mead NRA, including Rogers, Blue Point, Corral, and Kelsey's Springs. These springs discharge at or near the contact of local Paleozoic-aged carbonate rocks and basin fill sediments. If this change application is approved and fully developed, groundwater withdrawn by LCWD and Vidler will come directly from the regional aquifer at a new point of diversion that will be closer to the springs. In combination with other withdrawals, discharge at the subject springs could be affected.
8. The water and water-related resources of Lake Mead NRA are locally and nationally important.

Thus, the NPS concludes:

1. There is no water available for appropriation.
2. The approval and full development will conflict with existing rights.
3. The approval would threaten to prove detrimental to the public interest.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 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 Nevada. The State Engineer finds that in the case of protested Application 81619 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.

Application 81619 is not requesting a new appropriation of water. Rather, the application is seeking to change its existing water right granted under Permit 64692 to a

new well location. The issues raised by the Protestant regarding the perennial yield of the groundwater basin and its committed resources would be proper for the consideration of a new appropriation of water; however, in this case, the water is already appropriated and accounted for in the basin budget. This issue has been addressed in the approval of Permit 64692, which as the Protestant noted, is the result of the settlement of litigation brought by the Applicant. The water could be pumped at its current location if the change application was denied or it could be pumped at its new location if the change application is approved. Either way the regional impact on the Tule Desert Hydrographic Basin would be similar. In addition, Application 81619 would be subject to the same stipulated conditions as found in the NDWR/Vidler&LCWD Settlement.²

The State Engineer finds that the application before him is a change of an existing water right and the application does not seek a new appropriation of water; the issue of water available for appropriation was settled with the issuance of Permit 64692 and is not germane to change Application 81619. The State Engineer finds the proposed change in point of diversion will have no additional impact on the Tule Desert Hydrographic Basin.

III.

The Applicant and Protestant have entered into a Tule Desert Monitoring, Management and Mitigation Plan (TDMP) for the proposed groundwater development in Tule Desert as part of a stipulation to withdraw protest to Applications 64692, 64693 and 66932. The *Lincoln County Land Act Groundwater Development and Utility Right-of Way Project Final Environmental Impact Statement* (EIS) identifies the area of Tule Desert that is reserved for up to 15 wells that may be constructed for future water production.

The State Engineer finds that the TDMP does not change with the request to change a point of diversion of the original permits; it is expected that additional well locations will be necessary to develop the water.

² File No. 64692, *Settlement Agreement Among the State Engineer, State of Nevada, Tracy Taylor, P.E., Nevada State Engineer, Jason King P.E., Acting State Engineer, Lincoln County Water District and Vidler Water Company*, April 1, 2010, official records in the Office of the State Engineer.

IV.

The protest issues related to conflicts with existing water rights are addressed in the Applicant's response to protest.³ The Applicant is allowed under existing permits to proceed with staged development of its water rights and will analyze the impact of pumping including a staged aquifer pumping test of at least 2,500 afa for a minimum of 8 consecutive years. The State Engineer has the authority to limit additional withdrawals of water or otherwise require mitigation if impacts to existing water rights are detected.

The State Engineer finds that there are adequate protections for existing water rights through the TDMP, EIS, and the NDWR/Vidler&LCWD Settlement Agreement.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:⁵

- 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.

The State Engineer concludes that Application 81619 can be approved under express conditions including, but not limited to, the NDWR/Vidler&LCWD Settlement Agreement.

³ See, *Answer to National Park Service Protest to Change Application No. 81619 (Tule Desert) Filed by Lincoln County Water District and Vidler Water Company, Inc.*, June 12, 2012, File No. 81619, official records in the Office of the State Engineer.

⁴ NRS Chapters 533 and 534.

⁵ NRS § 533.370(2).

IV.

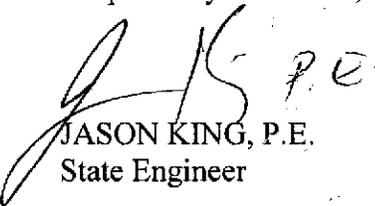
Based on the findings contained herein, the State Engineer concludes that change Application 81619 will not conflict with existing rights and protectible interests in existing domestic wells and will not threaten to prove detrimental to the public interest.

RULING

The protest is overruled and Application 81619 is hereby approved subject to:

1. Existing rights;
2. Payment of the statutory permit fee.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 2nd day of
August, 2012.