

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

IN THE MATTER OF APPLICATION 65364)
FILED TO CHANGE THE POINT OF)
DIVERSION AND MANNER OF USE OF)
WATERS PREVIOUSLY APPROPRIATED)
FROM AN UNDERGROUND SOURCE WITHIN)
THE PLEASANT VALLEY GROUNDWATER BASIN)
(088), WASHOE COUNTY, NEVADA.)

RULING

4838

GENERAL

I.

Application 65364 was filed on July 29, 1999, by Washoe County to change the point of diversion and manner of use of 4.35 cubic feet per second, not to exceed 1,830.53 acre-feet annually, a portion of the water previously appropriated under Permit 35150.¹ Application 65364 proposes to change the manner of use from quasi-municipal to municipal purposes within the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 25, the S $\frac{1}{2}$ of Section 34, the S $\frac{1}{2}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ all in Section 35, and the W $\frac{1}{2}$ of Section 36 all in T.18N., R.19E., M.D.B. & M., within all of Sections 1, 2, 3, 10, 11 and 12, the S $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ all in Section 4, the E $\frac{1}{2}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9, all in T.17N., R.19E., M.D.B. & M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T.17N., R.19E., M.D.B. & M.

II.

Application 65364 was timely protested by Tom L. Nance, William C. and Diane C. Oney, Kenneth D. Cunningham and Ronald L. Nesler on grounds that the proposed well and its associated cone of depression will likely cause a lowering of the local water table which will adversely affect either their domestic wells or in the case of Mr. Nesler his permitted well. They requested that their pre-existing wells be monitored and if any decreases were noted, the County well be abandoned. Several of the protestants (Nance, Oney and Cunningham) further requested that a condition of the permit should require the County to deepen their wells. Their

¹ File No. 65364, official records in the office of the State Engineer.

wells have provided good service over a number of years and the protestants do not believe the County's proposed well should be allowed to negatively impact their wells and that the County should at least be held responsible for its actions if those wells are negatively impacted. Therefore, the protestants requested that the application be denied or subject to the above-referenced items.

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.360 provides that the applicant for a well for the use of underground water shall mail a copy of the notice of the application to each owner of real property containing a domestic well that is within 2,500 feet of the proposed well. Washoe County by letter dated November 2, 1999, notified the State Engineer of its compliance with this statutory requirement. The State Engineer finds that Washoe County complied with the statutory requirement and that the four protestants to Application 65364 were notified and all have wells within 2,500 feet of the proposed point of diversion under Application 65364.

II.

Nevada Revised Statute § 534.110 provides for any permit issued:

- (a) In a county whose population is less than 400,000;
- (b) For municipal, quasi-municipal or industrial use; and
- (c) Whose reasonably expected rate of diversion is one-half cubic foot per second or more the permittee is to periodically report to the State Engineer the effect the permittee's well has on other previously existing wells located within 2,500 feet of the proposed point of diversion. The State Engineer finds this provision of the law requires Washoe County to monitor these protestants' wells and report to the State Engineer periodically on any impacts its pumping under any permit granted under Application 65364 has on those wells.

III.

Nevada Revised Statute § 534.110(4) further provides that it is a condition of each appropriation of ground water acquired under Chapter 534 of the Nevada Revised Statutes that the right of the appropriator relates to a specific quantity of water and that the right must allow for a reasonable lowering of the static water level in a particular area. The State Engineer shall also consider the economics of pumping water for the general type of crops growing and may also consider the effect of using water has on the economy of the area in general.

This section does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as the rights of holders of existing appropriations can be satisfied under such express conditions.

The protestants request that if there is any impact to their existing wells the County's well be abandoned. The State Engineer finds the law provides for a reasonable lowering of the static water level in a particular area and does not prevent the granting of a permit later in time on the grounds that the proposed later appropriation may cause a lowering of the water level so long as the rights of holders of existing appropriations can be satisfied.

The law further provides that under a permit for a well for municipal use in a county whose population is less than 400,000 for a diversion rate of at least one-half cubic foot per second the State Engineer must include as a condition of the permit that pumping of water under that permit may be limited or prohibited to prevent any unreasonable adverse effects on an existing domestic well located within 2,500 feet of the well proposed under the application unless the holder of the permit and owner of the domestic well have agreed to alternative measures that mitigate these adverse affects. The State Engineer finds the law provides a remedy as to any adverse affects to the protestants' wells, but

does not specifically require the deepening of protestants' wells as a condition of approval of said permit.

IV.

In response to the protests, on December 16, 1999, Washoe County filed in the office of the State Engineer an answer to said protests. In that answer, Washoe County indicated that NRS § 533.360 requires the State Engineer, irrespective of any protest, to impose the conditions requested by the protestants. The State Engineer first notes that Washoe County apparently cited the wrong statute in its response and believes it meant to identify NRS § 534.110 noted above. The answer indicates that Washoe County has already begun or tried to begin to monitor the protestants' wells. Washoe County indicates that it will monitor these domestic wells during the pump testing of the associated well. The State Engineer finds that Washoe County is required to monitor these wells more than just during its pump tests. The State Engineer finds as a condition of any permit granted under these applications it is required to monitor the protestants' wells.

V.

Attached to Washoe County's answer it provided a copy of a draft policy indicating that the County in other instances has already attempted to address any impact issues related to the lowering of groundwater levels as a result of its pumping. The State Engineer finds that Washoe County has been responsible in the past and has been proactive in instituting an adequate policy to assist any domestic well owners impacted by its groundwater withdrawals.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the subject matter of this action and determination.²

² NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where³:

- a. the proposed use conflicts with existing rights; or
- b. the proposed use threatens to prove detrimental to the public interest.

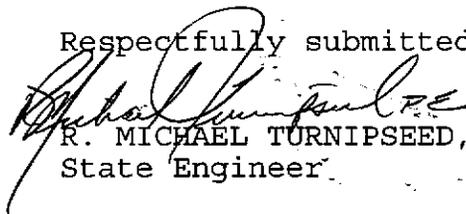
III.

In light of the statutory provision which allows for a reasonable lowering of the static water level by applicants later in time, so long as the rights of senior appropriators can be satisfied, and the provision which provides that the State Engineer must condition any permit so that pumping underground water pursuant to the permit may be limited or prohibited to prevent any unreasonable effects on existing domestic wells within 2,500 feet of the proposed well (unless the holder of the permit and owner of the domestic well have agreed to alternative measures that mitigate the adverse affects), the State Engineer concludes the protestants' interests in their domestic or permitted wells is sufficiently protected.

RULING

The protests to Application 65364 are hereby overruled and Application 65364 is granted subject to existing rights, the conditions of NRS § 534.110 and the payment of statutory permit fees.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/cl

Dated this 20th day of
January, 2000.

³ NRS Chapter 533.370(3).