

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

IN THE MATTER OF PROTESTED)
APPLICATION 70409 FILED TO)
CHANGE THE POINT OF DIVERSION)
AND PLACE OF USE OF THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE PREVIOUSLY APPROPRIATED)
UNDER PERMIT 17838, CERTIFICATE)
5365 WITHIN THE TRUCKEE MEADOWS)
HYDROGRAPHIC BASIN (87), WASHOE)
COUNTY, NEVADA.)

RULING

#5440

GENERAL

I.

Application 70409 was filed on September 17, 2003, by the Truckee Meadows Water Authority (TMWA) to change the point of diversion and place of use of 1.0 cubic foot per second (cfs), being a portion of underground water previously permitted for appropriation under Permit 17838, Certificate 5365. The proposed manner of use and place of use is described as being for municipal and domestic purposes within the TMWA service area. Exhibit A, attached to the application, specifically describes the service area by section, township and range. The changes requested by Application 70409, if approved, would transfer the applicant's existing point of diversion from the NW¼ NW¼ of Section 18, T.19N., R.20E., M.D.B.&M. to a point which is located within the SE¼ SE¼ of Section 31, T.19N, R.20E., M.D.B.&M. The existing place of use is described as being located within the S½ of Section 12, Section 13, and Section 24, T.19N., R.19E., and the S½ of Section 7, Section 17, Section 18, and Section 19, T.19N., R.20E., M.D.B.&M.¹

II.

Application 70409 was timely protested by Walter Solon, on the following grounds:¹

Subject to prior rights of wells on 5940, 5960, and 5990, Home Garden Drive since 1953. Our home and two rentals, which are being impacted now. Sierra Pacific Water Authority, now Truckee Meadows Water Authority should remedy the situation. The Nevada State Law protects our

¹ File No. 70409, official records in the Office of the State Engineer.

domestic wells from the new and existing municipal wells that are impacting our wells now.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 533.365(3) 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 in the case of protested Application 70409, 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 review of records on file in the Office of the State Engineer show the protestant is the owner of three domestic wells that serve single-family dwellings located approximately 2,100 to 2,200 feet northwest of the proposed point of diversion under Application 70409. The use of the domestic wells is exempted from the requirement of obtaining a water right permit under Nevada water law.² It is the policy of the state to recognize the importance of domestic wells as appurtenances to private homes and to create a protectible interest in such wells and to protect their supply from unreasonable adverse effects, which are caused by municipal, quasi-municipal or industrial uses and which cannot reasonably be mitigated.³ In consideration of water right applications, the State Engineer must take into account whether the proposed change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024.⁴

The State Engineer finds that the protestant has existing domestic wells and has a protectible interest from unreasonable adverse effects caused by the requested municipal pumping, which cannot reasonably be mitigated.

III.

Nevada water law does not prevent the granting of permits to applicants later in time on the grounds that the diversions under the proposed later appropriations may cause lowering of the static water level at the appropriator's point of diversion so long as any

² NRS §§ 534.013 and 534.180.

³ NRS § 533.024 (2).

⁴ NRS § 533.370 (4).

protectible interests in existing domestic wells and the rights of existing appropriators can be reasonably satisfied. Additionally, Nevada water law requires the State Engineer to include as a condition of the permit that pumping water pursuant to the permit may be limited or prohibited to prevent any adverse effects on an existing domestic well located within 2,500 feet of the well.⁵ A review of Application 70409 and NRS § 534.110, shows that any permit issued under Application 70409 would fall within the criteria of this statute and would include the above-stated permit condition giving the State Engineer the authority to limit or prohibit the pumping of water at the proposed well site.

The State Engineer finds that protections exist within the Nevada water law to protect domestic well owners from an unreasonable lowering of the water table, should such impacts occur as a result of pumping water at the proposed well site.

IV.

The protestant's three domestic wells are located on parcels identified as Washoe County APNs 025-442-02, 03 and 07. The three properties were purchased by the protestant in 1953 each with a domestic well. The domestic well on APN 025-442-03 is described as being about 85 feet deep, 2 inches in diameter and is the well serving Mr. Solon's primary residence. The other two wells are described as being approximately 40 feet deep and 2 inches in diameter.⁶ A review of well driller reports on file in the Office of the State Engineer show a total of 29 domestic wells drilled between 1945 and 1976 within Section 31, T.19N., R.20E., M.D.B.&M.⁷ Most of these wells used 6-inch casing, which is standard for domestic wells, and ranged in depth from 48 feet to 160 feet. None of the well driller reports match the description of the three domestic wells owned by the protestant. In the absence of well driller reports on the three wells, it is impossible to determine how the wells were originally constructed, what the original static water level was in the wells, and whether the wells were installed by a Nevada licensed well driller.

The State Engineer finds that no well driller reports are on file for the three domestic wells; the wells are over fifty years old, shallow and an unusually small diameter for domestic use.

⁵ NRS § 534.110 (5).

⁶ See, answer to Protest, dated March 12, 2004, File No. 70409, official records in the Office of the State Engineer.

⁷ Nevada Division of Water Resources, Well Log Database, July 2, 2004.

V.

A review of all well driller reports in Section 31, T.19N., R.20E., M.D.B.&M., show a total of 73 reports on file in the Office of the State Engineer; this includes the 29 domestic wells mentioned above.⁸ Static water levels reported on the well driller reports fail to show a trend of declining water levels. For example, the oldest reported water level was from a domestic well drilled in 1948 with a reported water level of 20 feet. The newest reported water level was from a test well drilled in 2004 with a reported water level of 8 feet. Most of the reported water levels range from 4 feet to 35 feet with no recognizable trends and no indication of a rising or declining water table in the area.

The State Engineer finds that there is no evidence the water table near the protestant's wells has declined over the last fifty years.

VI.

The protestant has indicated that his domestic wells are already being impacted by a nearby municipal well and the proposed new well under Application 70409 will have additional impacts. The nearby municipal well the protestant alludes to in his protest, is the Sierra Plaza Well under water right Permit 66119. The protestant's two 40-foot wells quit producing sufficient water around the year 2000 and the protestant's primary domestic well quit producing sufficient water around July 2003.⁶ Water use records, on file in the Office of the State Engineer, show 51.7 and 113.62 million gallons were pumped from the Sierra Plaza Well in 2002 and 2003, respectively. No water was reported pumped from the Sierra Plaza Well prior to 2002. Around July 2003, the static water level in the well at the protestant's primary residence was measured by TMWA at 15 feet below ground level.⁶ Unfortunately there is no prior water level data from the protestant's well to establish a baseline water level; however, the fact that the water level was only 15 feet deep in the summer of 2003 indicates the Sierra Plaza Well has had no significant impact on this domestic well. This result is not surprising as the Sierra Plaza Well is a deep aquifer well with a 100-foot annular seal to prohibit pumping ground water from the upper aquifer.

The proposed well under Permit 70409 is also planned as a deep aquifer well and will have an annular seal of at least 100 feet.⁹ The Sierra Plaza Well is approximately

⁸ Nevada Division of Water Resources, Well Log Database, July 2, 2004.

⁹ See, letter dated March 13, 2000, attached to protest, File No. 70409, official records in the Office of the State Engineer.

1,200 to 1,400 feet from the protestant's wells, while the proposed new well is approximately 2,100 to 2,200 feet from the protestant's wells.

The State Engineer finds that the Sierra Plaza Well has not caused any unreasonable adverse effects on the protestant's wells. The State Engineer finds that the proposed well under Permit 70409 is planned as a deep aquifer well, is further away from the protestant's domestic wells than the Sierra Plaza Well, and will be sealed to prohibit pumping from the upper aquifer and therefore should not impact the protestant's wells.

VII.

Around July and August of 2003, TMWA investigated the well at the primary residence and found that a submersible pump on the end of a 21-foot $\frac{3}{4}$ inch diameter drop pipe pumped water to the surface. The static water level at this time was 15 feet below ground level. Later, TMWA attempted to install a 40-foot $1\frac{1}{4}$ inch drop pipe with a new and bigger pump, together with a jet package and casing adapter, plus plumbing and electrical work. However, due to a restriction in the well casing, the work could not be completed as planned and ultimately, the only work that could be accomplished was lowering the drop extension of the pump intake about $2\frac{1}{2}$ to $3\frac{1}{2}$ feet. TMWA was able to install approximately 200 feet of C-900 6 inch water pipe, 20 feet of 1-inch service pipe, fittings, and 3 meter-boxes complete with meters and backflow prevention devices at TMWA's expense. This will allow the protestant access to municipal supply, if he so chooses.⁶

By telephone, the protestant indicated that he would like TMWA to re-drill his domestic well. This mitigation option is not available to either party as the State Engineer will not approve the drilling, deepening, reconditioning or replacement of a domestic well when water service is available to the property.¹⁰

The State Engineer finds that TMWA has completed all available mitigation measures to protect the protestant's wells from unreasonable adverse effects.

¹⁰ NAC 534.315(7).

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹¹

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹²

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. or conflicts with protectible interests in existing domestic wells as set forth in NRS 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

III.

The protestant's wells are over fifty years old, shallow and an unusually small diameter for domestic use. Also, there is no evidence the water table near the protestant's wells has changed significantly in the last fifty years. The State Engineer concludes that the protestant's inability to obtain sufficient water for domestic use from his three domestic wells is a result of substandard wells that have deteriorated over time, not a decline in the water table.

IV.

TMWA attempted to rehabilitate the protestant's domestic well at his primary residence and has made water service available to all three parcels at its own expense, despite no evidence municipal wells have affected the protestant's domestic wells. The State Engineer concludes that TMWA has completed all available measures to mitigate any potential adverse effects that may occur as a result of approval of Application 70409.

V.

The State Engineer concludes Application 70409 will not conflict with protectible interests in existing domestic wells as set forth in NRS § 533.024, NRS § 534.110, and NRS § 533.370 and approval of the application will not cause an unreasonable drawdown in any nearby domestic wells.

¹¹ NRS chapters 533 and 534.

¹² NRS § 533.370 (4).

RULING

The protest to Application 70409 is hereby overruled and the application is approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Hugh Ricci, P.E.", is written over a faint circular official seal.

HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 22nd day of
October, 2004.