

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

IN THE MATTER OF APPLICATIONS 70765,)
70766, 70767, 70768, 70769, 70770, 70771, 70772,)
70773 AND 74403 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE)
TRACY SEGMENT HYDROGRAPHIC BASIN)
(83), STOREY COUNTY, NEVADA.)

RULING
5749

GENERAL

I.

Application 70765 was filed on January 12, 2004, by TRI Water and Sewer Company c/o Robert M. Sader to appropriate 5.0 cubic feet per second (cfs) not to exceed 2,000 acre-feet annually (afa) of water from an underground source. The proposed manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within the SE¼ of Section 36 lying south of US Interstate Highway 80, T.20N., R.21E., M.D.B.&M. and Section 1 lying south of US Interstate Highway 80, T.19N., R.21E., M.D.B.&M. and Sections 31 and 32 lying south of US Interstate Highway 80, Sections 33, 34 and 35 lying south of the railroad tracks, and Section 36, T.20N., R.22E., M.D.B.&M. and Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, N½ of Section 23 and N½ of Section 24, T.19N., R.22E., M.D.B.&M. and the S½ of Section 29, S½ of Section 30, Section 31 and Section 32, T.20N., R.23E., M.D.B.&M. and Sections 5, 6, 7, 8, W½ of Section 9, W½ of Section 16, Sections 17, 18, 19, 20, 21, 29, 30 and W½ of Section 22, T.19N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 17, T.19N., R.23E., M.D.B.&M.¹

II.

Application 70766 was filed on January 12, 2004, by TRI Water and Sewer Company c/o Robert M. Sader to appropriate 5.0 cfs not to exceed 2,000 afa of water from an underground source. The proposed manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within the SE¼ of

¹ File No. 70765, official records in the Office of the State Engineer.

Section 36 lying south of US Interstate Highway 80, T.20N., R.21E., M.D.B.&M. and Section 1 lying south of US Interstate Highway 80, T.19N., R.21E., M.D.B.&M. and Sections 31 and 32 lying south of US Interstate Highway 80, Sections 33, 34 and 35 lying south of the railroad tracks, and Section 36, T.20N., R.22E., M.D.B.&M. and Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, N $\frac{1}{2}$ of Section 23 and N $\frac{1}{2}$ of Section 24, T.19N., R.22E., M.D.B.&M. and the S $\frac{1}{2}$ of Section 29, S $\frac{1}{2}$ of Section 30, Section 31 and Section 32, T.20N., R.23E., M.D.B.&M. and Sections 5, 6, 7, 8, W $\frac{1}{2}$ of Section 9, W $\frac{1}{2}$ of Section 16, Sections 17, 18, 19, 20, 21, 29, 30 and W $\frac{1}{2}$ of Section 22, T.19N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T.19N., R.23E., M.D.B.&M.²

III.

Application 70767 was filed on January 12, 2004, by TRI Water and Sewer Company c/o Robert M. Sader to appropriate 5.0 cfs not to exceed 2,000 afa of water from an underground source. The proposed manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within the SE $\frac{1}{4}$ of Section 36 lying south of US Interstate Highway 80, T.20N., R.21E., M.D.B.&M. and Section 1 lying south of US Interstate Highway 80, T.19N., R.21E., M.D.B.&M. and Sections 31 and 32 lying south of US Interstate Highway 80, Sections 33, 34 and 35 lying south of the railroad tracks, and Section 36, T.20N., R.22E., M.D.B.&M. and Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, N $\frac{1}{2}$ of Section 23 and N $\frac{1}{2}$ of Section 24, T.19N., R.22E., M.D.B.&M. and the S $\frac{1}{2}$ of Section 29, S $\frac{1}{2}$ of Section 30, Section 31 and Section 32, T.20N., R.23E., M.D.B.&M. and Sections 5, 6, 7, 8, W $\frac{1}{2}$ of Section 9, W $\frac{1}{2}$ of Section 16, Sections 17, 18, 19, 20, 21, 29, 30 and W $\frac{1}{2}$ of Section 22, T.19N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T.19N., R.23E., M.D.B.&M.³

IV.

Application 70768 was filed on January 12, 2004, by TRI Water and Sewer Company c/o Robert M. Sader to appropriate 5.0 cfs not to exceed 2,000 afa of water from an underground source. The proposed manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within the SE $\frac{1}{4}$ of

² File No. 70766, official records in the Office of the State Engineer.

³ File No. 70767, official records in the Office of the State Engineer.

Section 36 lying south of US Interstate Highway 80, T.20N., R.21E., M.D.B.&M. and Section 1 lying south of US Interstate Highway 80, T.19N., R.21E., M.D.B.&M. and Sections 31 and 32 lying south of US Interstate Highway 80, Sections 33, 34 and 35 lying south of the railroad tracks, and Section 36, T.20N., R.22E., M.D.B.&M. and Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, N $\frac{1}{2}$ of Section 23 and N $\frac{1}{2}$ of Section 24, T.19N., R.22E., M.D.B.&M. and the S $\frac{1}{2}$ of Section 29, S $\frac{1}{2}$ of Section 30, Section 31 and Section 32, T.20N., R.23E., M.D.B.&M. and Sections 5, 6, 7, 8, W $\frac{1}{2}$ of Section 9, W $\frac{1}{2}$ of Section 16, Sections 17, 18, 19, 20, 21, 29, 30 and W $\frac{1}{2}$ of Section 22, T.19N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T.19N., R.23E., M.D.B.&M.⁴

V.

Application 70769 was filed on January 12, 2004, by TRI Water and Sewer Company c/o Robert M. Sader to appropriate 5.0 cfs not to exceed 2,000 afa of water from an underground source. The proposed manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within the SE $\frac{1}{4}$ of Section 36 lying south of US Interstate Highway 80, T.20N., R.21E., M.D.B.&M. and Section 1 lying south of US Interstate Highway 80, T.19N., R.21E., M.D.B.&M. and Sections 31 and 32 lying south of US Interstate Highway 80, Sections 33, 34 and 35 lying south of the railroad tracks, and Section 36, T.20N., R.22E., M.D.B.&M. and Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, N $\frac{1}{2}$ of Section 23 and N $\frac{1}{2}$ of Section 24, T.19N., R.22E., M.D.B.&M. and the S $\frac{1}{2}$ of Section 29, S $\frac{1}{2}$ of Section 30, Section 31 and Section 32, T.20N., R.23E., M.D.B.&M. and Sections 5, 6, 7, 8, W $\frac{1}{2}$ of Section 9, W $\frac{1}{2}$ of Section 16, Sections 17, 18, 19, 20, 21, 29, 30 and W $\frac{1}{2}$ of Section 22, T.19N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.19N., R.23E., M.D.B.&M.⁵

VI.

Application 70770 was filed on January 12, 2004, by TRI Water and Sewer Company c/o Robert M. Sader to appropriate 5.0 cfs not to exceed 2,000 afa of water from an underground source. The proposed manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within the SE $\frac{1}{4}$ of

⁴ File No. 70768, official records in the Office of the State Engineer.

⁵ File No. 70769, official records in the Office of the State Engineer.

Section 36 lying south of US Interstate Highway 80, T.20N., R.21E., M.D.B.&M. and Section 1 lying south of US Interstate Highway 80, T.19N., R.21E., M.D.B.&M. and Sections 31 and 32 lying south of US Interstate Highway 80, Sections 33, 34 and 35 lying south of the railroad tracks, and Section 36, T.20N., R.22E., M.D.B.&M. and Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, N½ of Section 23 and N½ of Section 24, T.19N., R.22E., M.D.B.&M. and the S½ of Section 29, S½ of Section 30, Section 31 and Section 32, T.20N., R.23E., M.D.B.&M. and Sections 5, 6, 7, 8, W½ of Section 9, W½ of Section 16, Sections 17, 18, 19, 20, 21, 29, 30 and W½ of Section 22, T.19N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 20, T.19N., R.23E., M.D.B.&M.⁶

VII.

Application 70771 was filed on January 12, 2004, by TRI Water and Sewer Company c/o Robert M. Sader to appropriate 5.0 cfs not to exceed 2,000 afa of water from an underground source. The proposed manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within the SE¼ of Section 36 lying south of US Interstate Highway 80, T.20N., R.21E., M.D.B.&M. and Section 1 lying south of US Interstate Highway 80, T.19N., R.21E., M.D.B.&M. and Sections 31 and 32 lying south of US Interstate Highway 80, Sections 33, 34 and 35 lying south of the railroad tracks, and Section 36, T.20N., R.22E., M.D.B.&M. and Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, N½ of Section 23 and N½ of Section 24, T.19N., R.22E., M.D.B.&M. and the S½ of Section 29, S½ of Section 30, Section 31 and Section 32, T.20N., R.23E., M.D.B.&M. and Sections 5, 6, 7, 8, W½ of Section 9, W½ of Section 16, Sections 17, 18, 19, 20, 21, 29, 30 and W½ of Section 22, T.19N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 11, T.19N., R.22E., M.D.B.&M.⁷

VIII.

Application 70772 was filed on January 12, 2004, by TRI Water and Sewer Company c/o Robert M. Sader to appropriate 5.0 cfs not to exceed 2,000 afa of water from an underground source. The proposed manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within the SE¼ of

⁶ File No. 70770, official records in the Office of the State Engineer.

⁷ File No. 70771, official records in the Office of the State Engineer.

Section 36 lying south of US Interstate Highway 80, T.20N., R.21E., M.D.B.&M. and Section 1 lying south of US Interstate Highway 80, T.19N., R.21E., M.D.B.&M. and Sections 31 and 32 lying south of US Interstate Highway 80, Sections 33, 34 and 35 lying south of the railroad tracks, and Section 36, T.20N., R.22E., M.D.B.&M. and Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, N½ of Section 23 and N½ of Section 24, T.19N., R.22E., M.D.B.&M. and the S½ of Section 29, S½ of Section 30, Section 31 and Section 32, T.20N., R.23E., M.D.B.&M. and Sections 5, 6, 7, 8, W½ of Section 9, W½ of Section 16, Sections 17, 18, 19, 20, 21, 29, 30 and W½ of Section 22, T.19N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 11 of Section 5, T.19N., R.23E., M.D.B.&M.⁸

IX.

Application 70773 was filed on January 12, 2004, by TRI Water and Sewer Company c/o Robert M. Sader to appropriate 5.0 cfs not to exceed 2,000 afa of water from an underground source. The proposed manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within the SE¼ of Section 36 lying south of US Interstate Highway 80, T.20N., R.21E., M.D.B.&M. and Section 1 lying south of US Interstate Highway 80, T.19N., R.21E., M.D.B.&M. and Sections 31 and 32 lying south of US Interstate Highway 80, Sections 33, 34 and 35 lying south of the railroad tracks, and Section 36, T.20N., R.22E., M.D.B.&M. and Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, N½ of Section 23 and N½ of Section 24, T.19N., R.22E., M.D.B.&M. and the S½ of Section 29, S½ of Section 30, Section 31 and Section 32, T.20N., R.23E., M.D.B.&M. and Sections 5, 6, 7, 8, W½ of Section 9, W½ of Section 16, Sections 17, 18, 19, 20, 21, 29, 30 and W½ of Section 22, T.19N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 31, T.20N., R.23E., M.D.B.&M.⁹

X.

Application 74403 was filed on June 21, 2006, by Painted Rock Partners L.P. to appropriate 4.26 cfs of water from an underground source. The proposed manner of use is for quasi-municipal and domestic purposes. The proposed place of use is described as being located within portions of the N½, N½ S½ of Section 19, T.20N., R.24E.,

⁸ File No. 70772, official records in the Office of the State Engineer.

⁹ File No. 70773, official records in the Office of the State Engineer.

M.D.B.&M. and the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 22, SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, that portion lying south of the Truckee Canal and within the NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 23, all that portion of Section 24 lying south of the Truckee Canal, N $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 25, N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$, portion of NW $\frac{1}{4}$ of Section 26, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T.20N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T.20N., R.24E., M.D.B.&M.¹⁰

XI.

Application 74403 was timely protested by the Pyramid Lake Paiute Tribe and Churchill County on grounds that are not being considered in this ruling.¹⁰

FINDINGS OF FACT

I.

Applications 70765, 70766, 70767, 70768, 70769, 70770, 70771, 70772 and 70773 request new appropriations of underground water within the Tracy Segment Hydrographic Basin totaling 18,000 afa. Application 74403 does not specify a duty of water, but a duty can be calculated by expanding the requested diversion rate of 4.26 cfs. The diversion rate expanded equates to a duty of approximately 3,084 afa.

The Nevada Revised Statutes (NRS) chapters 533 and 534 and the policies developed by the Office of the State Engineer control the appropriation of water within the State of Nevada. Under the provisions found under NRS § 533.370(5), before an application that requests a new appropriation of underground water can be considered for approval it must be determined, among other things, that there is unappropriated water available at the targeted source. The answer to the question of what amount of underground water is available for additional appropriation from the Tracy Segment Hydrographic Basin can be found in an analysis of the basin's recharge-discharge relationship.

This analysis was recently completed on June 27, 2007, during the consideration of senior applications to appropriate water within the Tracy Segment Hydrographic Basin. The State Engineer found and concluded that the perennial yield of the Tracy

¹⁰ File No. 74403, official records in the Office of the State Engineer.

Segment Hydrographic Basin was 11,500 afa and, by subtracting existing ground-water commitments, 2,920 afa of underground water was available for appropriation. This available water was fully allocated to the senior applications, leaving no significant quantities of water to be had for appropriation by applications filed later in time.¹¹

The State Engineer finds that State Engineer's Ruling No. 5747 allocated the remaining available water in the Tracy Segment Hydrographic Basin and therefore, there is insufficient water to satisfy the large quantities requested for appropriation under Applications 70765, 70766, 70767, 70768, 70769, 70770, 70771, 70772, 70773 and 74403.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹²

II.

The State Engineer is prohibited by law from granting a permit to appropriate public waters where:¹³

- 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 committed groundwater resources of the Tracy Segment Hydrographic Basin currently equal the ground-water basin's estimated perennial yield.¹¹ The State Engineer concludes that the approval the subject applications would result in the withdrawal of ground water in excess of the perennial yield of the Tracy Segment Hydrographic Basin and therefore, would adversely affect existing rights and would threaten to prove detrimental to the public interest.

¹¹ State Engineer's Ruling No. 5747, June 27, 2007, official records in the Office of the State Engineer.

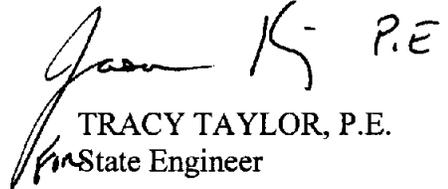
¹² NRS chapters 533 and 534.

¹³ NRS § 533.370(5).

RULING

Applications 70765, 70766, 70767, 70768, 70769, 70770, 70771, 70772, 70773 and 74403 are hereby denied on the grounds that their approval would conflict with existing rights and would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,

 P.E.
TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 5th day of
July, 2007.