

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

IN THE MATTER OF APPLICATION 69761)
FILED TO CHANGE THE POINT OF)
DIVERSION, PLACE OF USE AND)
MANNER OF USE OF A PORTION OF)
THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 16815,)
CERTIFICATE 5162, WITHIN THE)
TRUCKEE MEADOWS HYDROGRAPHIC)
BASIN (87), WASHOE COUNTY,)
NEVADA.)

RULING
#5798

GENERAL

I.

Application 69761 was filed on March 21, 2003, by the Charles L. Dickson and Nancy A. Gillett 1995 Revocable Trust to change the point of diversion, place of use and manner of use of 0.05 cubic feet per second (cfs), not to exceed 4.04 acre-feet annually (afa) of underground water previously appropriated under Permit 16815, Certificate 5162, for municipal purposes. The proposed place of use is described as being the Truckee Meadows Water Authority's service area, which is mostly contained within the Truckee Meadows Hydrographic Basin and is shown on the supporting map filed in support of Application 69710 in the State Engineer's Office. The existing place of use is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T.20N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T.19N., R.20E., M.D.B.&M. The existing point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T.20N., R.20E., M.D.B.&M.¹

FINDINGS OF FACT

I.

By State Engineer's Order No. 708, issued March 1, 1978, the State Engineer designated and described the Truckee Meadows Hydrographic Basin as a groundwater

¹ File No. 69761, official records in the Office of the State Engineer.

basin in need of additional administration.² The State Engineer finds that the point of diversion described under Application 69761 is located within the hydrologic boundaries of the designated Truckee Meadows Hydrographic Basin.

II.

The findings of the hydrologic study specific to the Truckee Meadows Hydrographic Basin are found within Water Resources-Reconnaissance Series Report No. 57, "A Brief Water Resources Appraisal of the Truckee River Basin, Western Nevada" (Report 57). This study provides a quantitative analysis of the groundwater basin's recharge-discharge components and estimates that the potential annual recharge to the Truckee Meadows Hydrographic Basin from precipitation is 27,000 afa, with an additional 1,200 acre-feet contributed by groundwater inflow from adjacent groundwater basins.³ The State Engineer finds that the natural recharge to the Truckee Meadows Hydrographic Basin is approximately 28,200 afa.⁴

III.

Perennial yield of a groundwater reservoir may be defined as the maximum amount of ground water that can be salvaged each year over the long term without depleting the groundwater reservoir. Perennial yield is ultimately limited to the maximum amount of natural discharge that can be salvaged for beneficial use. If the perennial yield is continually exceeded groundwater levels will decline.

Withdrawals of ground water in excess of the perennial yield contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increase in cost due to increased pumping lifts, land subsidence and possible reversal of groundwater gradients, which could result in significant changes in the recharge-discharge relationship.⁵

² State Engineer's Order No. 708, issued March 1, 1978, official records in the Office of the State Engineer.

³ Van Denburgh, A.S., Lamke, R.D., and Hughes, J.L., Water Resources Reconnaissance Series Report 57, A Brief Water Resources Appraisal of the Truckee River Basin, Western Nevada, United States Geological Survey, and State of Nevada, Division of Water Resources, Department of Conservation and Natural Resources, pp. 38, 44, and 45.

⁴ State Engineer's Ruling No. 4844, issued January 24, 2000, official records in the Office of the State Engineer.

⁵ State Engineer's Office, Water for Nevada, State of Nevada Water Planning Report No. 3, p. 13, Oct. 1971.

The committed groundwater resources in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Truckee Meadows Hydrographic Basin currently exceeds 47,700 afa. The State Engineer finds that the committed groundwater resource of the Truckee Meadows Hydrographic Basin exceeds the estimate of the groundwater basin's natural recharge.

IV.

Certificate 5162 was issued on August 4, 1961, under Permit 16815 for 0.1337 cfs for irrigation and domestic purposes. The place of use of Permit 16815, Certificate 5162 is an area historically irrigated under Claim 327 of the Final Decree in *United States v. Orr Water Ditch Co.*, In Equity Docket No. A-3 (D. Nev. 1994). The State Engineer finds that Permit 16815, Certificate 5162 was issued supplemental to Truckee River Decree Claim 327.

V.

Supplemental underground rights are primarily issued for the purpose of insuring that irrigated land can receive its full duty of water when surface water rights cannot be satisfied due to some circumstance that is out of the control of the farmer, such as drought. In a normal water year, it is expected that the supplemental underground right would not be utilized and only a portion of the right would be utilized in a drought year. The supplemental underground right is tied to the surface water on the existing place of use. Under most circumstances, the supplemental underground water cannot be changed without a corresponding change in the surface water, i.e. both the surface water and underground water must move together or, in some circumstances, the surface water may be moved if the underlying supplemental underground water is withdrawn.

In this case, the Applicant has proposed to sever the supplemental underground water from the surface water on the existing place of use to utilize the underground water for municipal purposes within the Washoe County service area. If Application 69761 was approved, it would create an improper use of a supplemental underground right that would result in an additional withdrawal of underground water from the Truckee Meadows aquifer that would not otherwise occur, thus creating a *de facto* water appropriation of 4.04 acre-feet annually in a groundwater basin where the committed groundwater resource exceeds the estimate of the groundwater basin's natural recharge.

The State Engineer finds that the proposed change under Application 69761 is inconsistent with the supplemental character of Permit 16815, Certificate 5162, and would result in an additional withdrawal of 4.04 acre-feet annually of groundwater that otherwise would not be withdrawn.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this determination.⁶

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:⁷

- A. there is no unappropriated water at the proposed source;
- B. the proposed use 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.

If approved, Application 69761 would pump an additional 4.04 acre-feet annually of water from the Truckee Meadows ground-water basin, would sever a supplemental underground right from its overlying surface water and would improperly change the character of the supplemental ground-water right. The State Engineer concludes approval of Application 69761 would conflict with existing rights and would threaten to prove detrimental to the public interest.

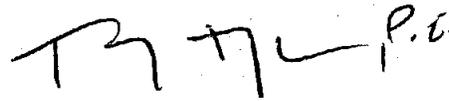
⁶ NRS chapters 533 and 534.

⁷ NRS § 533.370(5).

RULING

Application 69761 is hereby denied on the grounds that its approval would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,

Handwritten signature of Tracy Taylor, P.E. in black ink.

TRACY TAYLOR, P.E.
State Engineer

TT/KE/jm

Dated this 13th day of

November, 2007.