

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

IN THE MATTER OF APPLICATIONS 75366)
AND 75367 TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF THE)
UNDERGROUND WATERS OF THE DAYTON)
VALLEY HYDROGRAPHIC BASIN (103),)
LYON COUNTY, NEVADA.)

RULING

5824

GENERAL

I.

Lyon County filed Application 75366 on February 20, 2007, to change the point of diversion and place of use of 0.1 cubic feet per second (cfs), 1.99 million gallons annually (6.107 acre-feet annually), a portion of the underground water previously appropriated under Permit 27329, Certificate 9462, in the Dayton Valley Hydrographic Basin. The manner of use is for quasi-municipal purposes. The proposed place of use is within all or portions of Sections 24, 25 and 36, T.16N., R.20E., within all or portions of Sections 1, 2, 11, 12, 13, 14, 19, 20, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 of T.16N., R.21E., M.D.B.&M., within all or portions of Sections 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19 and 20, T.16N., R.22E., M.D.B.&M., within a portion of Section 36, T.17N., R.21E., M.D.B.&M., within all or portions of Sections 21, 22, 27, 28, 29, 30, 31, 32, 33 34, and 35, T.17N., R.22E., M.D.B.&M., and within the water service area of Lyon County/Dayton Utilities. The existing place of use is within portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.16N., R.21E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.16N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.16N., R.21E., M.D.B.&M. The remarks section of the application indicates that the water is being transferred into a Lyon County well site to allow the Dayton Valley Mobile Home Park to connect into and be served by Lyon County Utilities. Application 75366 was timely protested by the Pyramid Lake Paiute Tribe of Indians.¹

II.

Lyon County filed Application 75367 on February 20, 2007, to change the point of diversion and place of use of 0.1 cfs, 2.57 million gallons annually (7.887 acre-feet annually), a portion of the underground water previously appropriated under Permit 27330, Certificate 9461,

¹ File No. 75366, official records in the Office of the State Engineer.

in the Dayton Valley Hydrographic Basin. The manner of use is for quasi-municipal purposes. The proposed place of use is the same as that identified above. The existing place of use is within portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.16N., R.21E. M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T.16N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.16N., R.21E., M.D.B.&M. The remarks section of the application indicates the same as above. Application 75367 was timely protested by the Pyramid Lake Paiute Tribe of Indians.²

III.

Applications 73566 and 73567 were protested by the Pyramid Lake Paiute Tribe on the following grounds as summarized below.

1. Granting the application would threaten to prove detrimental to the public interest in light of the over-appropriation of the ground water available in the basin, and resulting in the inability of the perennial yield to serve existing permits and commitments of ground water, and in light of the obligations of the State Engineer pursuant to NRS chapters 533, 534 and 278 to require that there be adequate plans to protect existing rights, uses and commitments of ground water, and to exercise all appropriate authority and discretion to control over-demand on the source and to protect both the public and other right holders of both surface and ground water rights.
2. Granting the application would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Paiute Indian Reservation was created and the public interest, by depleting flows in the Carson River and reducing inflows to Lahontan Reservoir for the reasons stated above and because of the connection, both legal and physical, between ground water and surface water in the basin, to the detriment of senior surface water right holders in the Newlands Project, which senior right holders are entitled to divert Truckee River water through the Truckee Canal to make up for insufficient Carson River flows, which are the primary source to satisfy their rights, and which greater diversions of Truckee River water away from Pyramid Lake would operate to the detriment of the threatened and endangered species inhabiting Pyramid Lake and the lower Truckee River, and impair instream flows.
3. Granting the applications would threaten to prove detrimental to the public interest in ways that are not yet known by the Protestant, but which may arise or first become known to this Protestant in the period between the date of filing of the Application and the hearing on the protested Applications – by way of example Fernley's Application #57555 was filed on May 1, 1992, and the hearing was not held until February 6, 2006 – and in light of the position of the State Engineer that a specifically stated protest ground may not be amended regardless of the extensive passage of time between the date the protest is required to be filed, and the date of the hearing on a protested application.
4. Granting the application would threaten to prove detrimental to the public interest.

² File No. 75367, official records in the Office of the State Engineer.

IV.

By letter dated July 9, 2007, Lyon County requested the State Engineer resolve the outstanding protests because the mobile home park is serviced by two private wells that are located within the park boundaries, but which do not meet secondary water quality standards. The letter indicates that the Nevada Division of Environmental Protection, Bureau of Safe Drinking Water issued a variance to the mobile home park and also requested that Lyon County do what it can to get the mobile home park connected to the public water system. It also indicates that there is a new water main that runs directly in front of the mobile home park and the new points of diversion will be further away from the river than the current wells.

FINDINGS OF FACT

I.

On March 18, 2007, the State Engineer issued Ruling No. 5823, which addressed protest issues very similar to those raised here. Pursuant to that ruling the Tribe's protests were overruled. The State Engineer hereby adopts and incorporates Ruling No. 5823 into this ruling.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting a permit under an application or change application to appropriate the public waters where:⁴

- 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 the protest issue that the basin is over appropriated is not accurate, and therefore, use of water under these applications does not threaten to prove detrimental to the public interest. The State Engineer concludes, based on the recharge evidence,

³ NRS chapter 533 and 534.

⁴ NRS § 533.370(5).

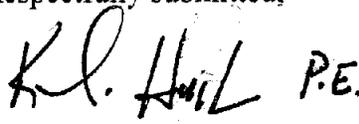
that the consumptive use of the water already appropriated is within the range of estimated recharge, that pumping is well within the range of estimated recharge, and that ground water recharged by precipitation in the basin is intended for appropriation by ground-water users within the basin, that the ground water does not "belong to the river," that ground water was not included in the *Alpine Decree* and that ground water is not being withdrawn in excess of the average annual replenishment to the ground-water supply. The State Engineer concludes that he is fulfilling the State Engineer's responsibility to insure the availability of water for subdivisions under NRS § 278.377(1)(b).

RULING

The protests to Applications 75366 and 75367 are hereby overruled and the applications are approved subject to:

1. Existing rights; and
2. The payment of statutory permit fees.

Respectfully submitted,


for TRACY TAYLOR, P.E.
State Engineer

TT/SJT/jm

Dated this 21st day of
March, 2008.