

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

IN THE MATTER OF APPLICATIONS 75165, )  
75166, 75167, 75168, 75169, 75170, 75171, )  
75172 AND 75173 FILED TO APPROPRIATE )  
THE WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE PARADISE VALLEY )  
(69) HYDROGRAPHIC BASIN, HUMBOLDT )  
COUNTY, NEVADA. )

**RULING**  
**# 5841**

**GENERAL**

**I.**

Application 75165 was filed by Tonto Corp. on December 8, 2006, to appropriate 5.0 cubic feet per second (cfs), not to exceed 281.0 acre-feet annually (afa) of water from an underground source for irrigation and domestic purposes within the Paradise Valley Hydrographic Basin. The proposed place of use is described as being within portions of the N½ NW¼ of Section 28, T.38N., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NW¼ of said Section 28.<sup>1</sup>

**II.**

Application 75166 was filed by Tonto Corp. on December 8, 2006, to appropriate 1.425 cfs, not to exceed 564.30 acre-feet per season, of water from an underground source for irrigation and domestic purposes within the Paradise Valley Hydrographic Basin. The proposed place of use is described as being located within portions of the NE¼ of Section 21, T.38N., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of said Section 21.<sup>2</sup>

**III.**

Application 75167 was filed by Tonto Corp. on December 8, 2006, to appropriate 4.0 cfs, not to exceed 800.0 acre-feet per season, of water from an underground source for irrigation and domestic purposes within the Paradise Valley Hydrographic Basin. The proposed place of use is described as being located within portions of the NW¼ and the SW¼ of Section 28, T.38N.,

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<sup>1</sup> File No. 75165, official records in the Office of the State Engineer.

<sup>2</sup> File No. 75166, official records in the Office of the State Engineer.

R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SW¼ of said Section 28.<sup>3</sup>

#### IV.

Application 75168 was filed by Tonto Corp. on December 8, 2006, to appropriate 3.34 cfs, not to exceed 1,161.6 afa, of water from an underground source for irrigation and domestic purposes within the Paradise Valley Hydrographic Basin. The proposed place of use is described as being located within portions of the E½ of Section 28, T.38N., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SE¼ of said Section 28.<sup>4</sup>

#### V.

Application 75169 was filed by Tonto Corp. on December 8, 2006, to appropriate 4.0 cfs, not to exceed 1,161.6 afa, of water from an underground source for irrigation and domestic purposes within the Paradise Valley Hydrographic Basin. The proposed place of use is described as being located within portions of the E½ of Section 28, T.38N., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of said Section 28.<sup>5</sup>

#### VI.

Application 75170 was filed by Tonto Corp. on December 8, 2006, to appropriate 3.34 cfs, not to exceed 1,148.42 afa, of water from an underground source for irrigation and domestic purposes within the Paradise Valley Hydrographic Basin. The proposed place of use is described as being located within the NE¼, N½ SE¼, portions of the S½ SE¼ of Section 16, T.38N., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of said Section 16.<sup>6</sup>

#### VII.

Application 75171 was filed by Tonto Corp. on December 8, 2006, to appropriate 2.725 cfs, not to exceed 1,116.32 afa, of water from an underground source for irrigation purposes within the Paradise Valley Hydrographic Basin. The proposed place of use is described as being located within portions of the NW¼, NW¼ NE¼, W½ SW¼ of Section 22, T.38N., R.39E.,

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<sup>3</sup> File No. 75167, official records in the Office of the State Engineer.

<sup>4</sup> File No. 75168, official records in the Office of the State Engineer.

<sup>5</sup> File No. 75169, official records in the Office of the State Engineer.

<sup>6</sup> File No. 75170, official records in the Office of the State Engineer.

M.D.B.&M. The proposed point of diversion is described as being within the NW¼ NE¼ of said Section 22.<sup>7</sup>

### VIII.

Application 75172 was filed by Tonto Corp. on December 8, 2006, to appropriate 2.0 cfs, not to exceed 1,116.32 afa, of water from an underground source for irrigation purposes within the Paradise Valley Hydrographic Basin. The proposed place of use is described as being located within portions of the NW¼, NW¼ NE¼, W½ SW¼ of Section 22, T.38N., R.39E., M.D.B.&M. The proposed point of diversion is described as being within the SW¼ SW¼ of said Section 22.<sup>8</sup>

### IX.

Application 75173 was filed by Tonto Corp. on December 8, 2006, to appropriate 5.0 cfs, not to exceed 640.0 afa, of water from an underground source for irrigation and domestic purposes within the Paradise Valley Hydrographic Basin. The proposed place of use is described as being located within the SW¼ of Section 16, T.38N., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NW¼ of said Section 16.<sup>9</sup>

## FINDINGS OF FACT

### I.

Nevada Revised Statute (NRS) § 534.120 provides that within an area that has been designated by the State Engineer where, in his judgment, the ground-water basin is being depleted, the State Engineer in his administrative capacity is empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved. The application of this provision of the NRS to the Paradise Valley Hydrographic Basin is evidenced by State Engineer's Order No. 408, dated October 22, 1971, and State Engineer's Order No. 832, dated December 1, 1983. These orders described and designated large portions of the Paradise Valley Hydrographic Basin as a ground-water basin in need of additional administration and placed further restrictions relating to the appropriation of underground water from the basin. State Engineer's Order No. 832 gave notice that no further appropriations would be approved for irrigation purposes within the designated area.<sup>10</sup>

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<sup>7</sup> File No. 75171, official records in the Office of the State Engineer.

<sup>8</sup> File No. 75172, official records in the Office of the State Engineer.

<sup>9</sup> File No. 75173, official records in the Office of the State Engineer.

<sup>10</sup> State Engineer's Order No. 832, December 1, 1983, official records in the Office of the State Engineer.

The Applicant argues that Order No. 832 provides that no applications filed after December 1, 1983, to irrigate additional lands would be approved but these applications are for lands that were in irrigation at the time the order was issued. However, the Applicant fails to mention that change applications were issued under the rights mentioned, which were subsequently cancelled.

All water right applications that are filed to appropriate additional underground water from the Paradise Valley Hydrographic Basin are subjected to a simple analysis, which identifies the location of their proposed point of diversion within the basin.

The State Engineer finds that if it is determined that the proposed points of diversion described under Applications 75165, 75166, 75167, 75168, 75169, 75170, 75171, 75172 and 75173 fall within the boundaries of the Paradise Valley Hydrographic Basin, its request for additional underground water for irrigation purposes must be denied.

## II.

The boundary of the designated portion of the Paradise Valley Hydrographic Basin is defined under State Engineer's Order Nos. 408 and 832. The description of the proposed point of diversion found on Applications 75165, 75166, 75167, 75168, 75169, 75170, 75171, 75172 and 75173 and their supporting maps was used to determine their location in relation to the Paradise Valley Hydrographic Basin. The locations were found to be well within the designated portion of the Paradise Valley Hydrographic Basin.

The State Engineer finds that the proposed points of diversion described on Applications 75165, 75166, 75167, 75168, 75169, 75170, 75171, 75172 and 75173 are located within the designated portion of the Paradise Valley Hydrographic Basin, which necessitates their denial as required under State Engineer's Order No. 832.

## III.

An examination of the records of the Office of the State Engineer identified numerous water right applications, which requested new appropriations of underground water for irrigation purposes that have been denied. These applications were denied on the grounds that their approval would conflict with existing rights and be detrimental to the public interest.<sup>11</sup>

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<sup>11</sup> State Engineer's Ruling Nos. 1891, 1894, 1922, 1930, 1937, 1990, 1999, 2093, 2108, 2233, 2833, 2834 and 2913, official records in the Office of the State Engineer.

The State Engineer finds that previous water right applications to appropriate underground water for irrigation purposes from the designated portion of the Paradise Valley Hydrographic Basin have been denied.

#### V.

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 Paradise Valley Hydrographic Basin can be found in an analysis of the basin's recharge-discharge relationship. Central to this equation is the concept of the perennial yield of the Paradise Valley Hydrographic Basin.

Perennial yield of a ground-water reservoir may be defined as the maximum amount of ground water that can be salvaged each year over the long term without depleting the ground-water 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, ground-water 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 ground-water gradients, which could result in significant changes in the recharge-discharge relationship.<sup>12</sup> The United States Geological Survey estimates that the perennial yield of the Paradise Valley Hydrographic Basin is approximately 11,700 acre-feet.<sup>13</sup> The committed ground-water resource in the form of permits and certificates to appropriate underground water from the Paradise Valley Hydrographic Basin currently exceeds 116,173 acre-feet annually.<sup>14</sup> Most of this committed resource is for irrigation purposes and the amount of water actually committed under existing water rights must take into account the supplemental nature of the

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<sup>12</sup> State Engineer's Office, Water for Nevada, State of Nevada Water Planning Report No. 3, p. 13, Oct. 1971.

<sup>13</sup> USGS Open File Report 78-768, Supplement, Basic Data in the Hydrographic-Area Database, Table 26.

<sup>14</sup> Special Hydrologic Basin Abstract, Water Rights Database, Basin 69, February 13, 2008, official records within the Office of the State Engineer.

water rights and the historic consumptive use. Supplemental irrigation water rights are ground-water rights, which have a place of use appurtenant to the same place of use as an existing surface-water right and are available for use only when the surface-water flow is inadequate to meet irrigation demands. Notwithstanding the supplemental irrigation rights and historic consumptive use, a comparison of the committed ground-water resources to the estimated perennial yield of the basin does not indicate any additional ground water being available for appropriation.

The State Engineer finds that existing ground-water rights in the Paradise Valley Hydrographic Basin exceeds the perennial yield of the ground-water basin.

### **CONCLUSIONS**

#### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>15</sup>

#### **II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>16</sup>

- 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.**

Applications 75165, 75166, 75167, 75168, 75169, 75170, 75171, 75172 and 75173 are new appropriations for irrigation and domestic purposes within the Paradise Valley Hydrographic Basin, a partially designated basin in which new appropriations for irrigation are to be denied. Current withdrawals from the Paradise Valley Hydrographic Basin greatly exceed the perennial yield for the Hydrographic Basin. The potential for ground-water quality degradation and adverse effects upon existing water rights would become greater with any additional appropriation of ground water.

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<sup>15</sup> NRS chapters 533 and 534.

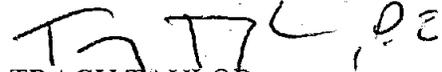
<sup>16</sup> NRS § 533.370(5).

The State Engineer concludes there is no unappropriated water available to support these applications. The State Engineer further concludes to grant the applications would violate the provisions of State Engineer's Order No. 832, conflict with existing rights, and threaten to prove detrimental to the public interest.

**RULING**

Applications 75165, 75166, 75167, 75168, 75169, 75170, 75171, 75172 and 75173 are hereby denied on the grounds that the granting thereof would violate the provisions of State Engineer's Order No. 832, conflict with existing rights, and threaten to prove detrimental to the public interest.

Respectfully submitted

  
TRACY TAYLOR  
State Engineer

TT/JDT/jm

Dated this 9th day of  
May, 2008.