

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

IN THE MATTER OF PROTESTED)
APPLICATIONS 76220 AND 76221)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE ANTELOPE)
VALLEY HYDROGRAPHIC BASIN (93),)
WASHOE COUNTY, NEVADA.)

RULING

#5843

GENERAL

I.

Application 76220 was filed on August 31, 2007, by Vincent and Lynn Cannizzaro to appropriate 0.0028 cubic feet per second (cfs), not to exceed 2.02 acre-feet annually (afa), of water from an underground source for domestic purposes. The proposed place of use is described as being located within portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14, T.22N., R.19E., 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 14, T.22N., R.19E., M.D.B.&M.¹ The remarks section of the application indicates the water is to serve one single family residence.

II.

Application 76221 was filed on August 31, 2007, by Vincent and Lynn Cannizzaro to appropriate 0.0028 cfs, not to exceed 2.02 afa, of water from an underground source for domestic purposes. The proposed place of use is described as being located within portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T.22N., R.19E., 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 14, T.22N., R.19E., M.D.B.&M.² The remarks section of the application indicates the water is to serve one single family residence.

III.

Applications 76220 and 76221 were timely protested by Washoe County on the following grounds:^{1,2}

¹ File No. 76220, official records in the Office of the State Engineer.

² File No. 76221, official records in the Office of the State Engineer.

The above referenced application proposes to appropriate 4.04 acre-feet of underground water from the Antelope Valley Hydrographic Basin. The U.S.G.S. Reconnaissance report #43 estimates 150 acre-feet as the perennial yield of this basin. State Engineer's records indicate 55.96 acre-feet of existing appropriations of ground water within this basin.

However, the appropriation data does not include the water legally allocated to all the existing and future domestic wells within this basin. Washoe County Assessors data indicates 184 lots with existing domestic wells and 124 lots with the legal right to drill a domestic well, for a total of 308 residential lots within this basin which can draw up to 2 acre-feet annually from each domestic well.

NRS 533.370 states that:

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

- 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 the 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.*

Therefore, based on the foregoing, granting of these applications would conflict with all aspects of NRS 533.370, and these applications should be denied.

FINDINGS OF FACT

I.

Nevada Revised Statute § 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 Applications 76220 and 76221 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.

Applications 76220 and 76221, if approved and fully utilized, would appropriate 4.04 afa of ground water within the Antelope Valley Hydrographic Basin. As a comparison, the

maximum duty for a domestic well in this area is 2 afa for which no permit is required.³ 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 the water level to be lowered at the point of diversion of a prior appropriator, so long as the rights of existing appropriators can be satisfied.

The State Engineer finds that the quantity of water requested in these applications is minimal and the approval of such a small quantity would not impair existing ground-water rights within the Antelope Valley Hydrographic Basin.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

- 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 that the amount of water applied for is minimal and will not cause an unreasonable drawdown in any nearby permitted or domestic wells.

IV.

Based on the record of evidence available, the State Engineer concludes that approval of Applications 76220 and 76221 will not threaten to prove detrimental to the public interest.

³ NRS § 534.180.

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.370 (5).

V.

The State Engineer concludes the Protestant's assertion that no further ground water development can occur in the Antelope Valley Hydrographic Basin is incorrect and therefore, the protest claim may be overruled.

RULING

The protest to Applications 76220 and 76221 is overruled and Applications 76220 and 76221 are hereby approved subject to existing rights and payment of the statutory permit fee.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/KE/jm

Dated this 13th day of
May, 2008.