

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

IN THE MATTER OF PROTESTED )  
APPLICATION 72700 FILED TO CHANGE THE )  
POINT OF DIVERSION AND PLACE OF USE )  
OF A PORTION OF THE PUBLIC WATERS OF )  
AN UNDERGROUND SOURCE PREVIOUSLY )  
APPROPRIATED UNDER PERMIT 64977 )  
WITHIN THE DRY VALLEY HYDROGRAPHIC )  
BASIN (95), WASHOE COUNTY, NEVADA. )

**RULING**  
**# 5897**

**GENERAL**

**I.**

Application 72700 was filed on May 3, 2005, by Intermountain Water Supply, Ltd., to change the point of diversion and place of use of 1.38 cubic feet per second, not to exceed 996 acre-feet annually (afa), a portion of the underground water previously appropriated under Permit 64977. The proposed manner of use and place of use is described as being for municipal and domestic purposes within a portion of the Warm Springs Valley Hydrographic Basin (84). The proposed place of use is further described as being located within a portion of Sections 12, 13, 14, and 24, T.24N., R.19E., M.D.B.&M., and a portion of Sections 7, 17, 18, 19, 21, 27, 28, 29, 30, 32, 33 and 34, T.24N., R.20E., M.D.B.&M. The existing place of use is described as being within the Lemmon Valley Hydrographic Basin (92). The existing place of use is further described as being located within Sections 1 through 36, T.21N., R.19E., M.D.B.&M., Section 36, T.21N., R.18E., M.D.B.&M., Sections 1 through 12, 15, 16, and 17, T.20N., R.19E., M.D.B.&M., and Sections 1 and 12, T.20N., R.18E., M.D.B.&M. The change requested by Application 72700, if approved, would transfer the Applicant's existing point of diversion from the NW¼ NW¼ of Section 11, T.24N., R.19E., M.D.B.&M., to a point located within the SE¼ SE¼ of Section 2, T.24N., R.19E., M.D.B.&M.<sup>1</sup>

**II.**

Application 72700 was timely protested by Washoe County on the following grounds:<sup>1</sup>

The above referenced application proposes to change the point of diversion and place of use of a portion of permit 64977. State Engineer has previously granted permits 64977, 64978, and 66400 with a total approximate combined duty of 3000 acre-feet. Application 66961 with a duty of 2000 acre-feet is pending.

<sup>1</sup> File No. 72700, official records in the Office of the State Engineer.

Washoe County has filed informal protests against permits 64977, 64978 & 66400; and formal protests against application 66961 and change applications 69663, 69664 and 69665.

Washoe County's protests and objection to these filings is not against any one particular application, rather against all filings, which collectively seek 5,000 acre-feet of water from Dry Valley hydrographic basin. Previous and ongoing studies suggest that such quantities of water may not be available for appropriation.

Washoe County agrees that some quantity of water is available for appropriation, which based on previous USGS estimates is in the order of 1000 acre-feet annually, which is greater than the 600 acre-feet sought by application 72700. However, so long as the previous appropriations (3000 acre-feet) are not amended down to a sustainable level and pending application 66961 is not denied, Washoe County has no choice but to protest any and all applications within this hydrographic basin.

### **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 Application 72700 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.**

The State Engineer issued Permit 64977, which is the basis for change Application 72700, on January 11, 2002, with a duty of water that was not to exceed 1,447 afa. This permit shares a total combined duty of water with Permits 64978 and 66400 of 2,996 afa. In approving Permit 64977, the State Engineer made the determination that Permit 64977 complied with all the statutory requirements for approval. Application 72700 does not seek an additional appropriation of water, only a change in the point of diversion and place of use of an existing water right permit within Dry Valley.<sup>2</sup>

In State Engineer's Ruling No. 5622, a similar argument regarding re-evaluation of existing permits was rejected by the State Engineer on the grounds that the issue of water availability was settled with the issuance of the base right permit and would not be revisited

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<sup>2</sup> Permit No. 64977, official records in the Office of the State Engineer.

under changes in the point of diversion. When Permits 64977, 64978 and 66400 were issued, the State Engineer made a determination, based on the limited information available at that time, that 2,996 afa of underground water was available for appropriation in the Dry Valley Hydrographic Basin. In State Engineer's Ruling No. 5622 the State Engineer determined:

From an administrative standpoint, it would be problematical for the State Engineer to reduce or extinguish water rights held by existing permit holders based solely upon a newer and lower estimate of perennial yield and the fact that a change application had been filed. When a permit is issued to appropriate the public waters of the state of Nevada there must be some expectation on the part of the permit holder that he may go forward with the development of his project, which necessitates certain expenses and obligations, without a cloud of uncertainty that some future hydrological report may be utilized to take all or a portion of his existing water right permits. This does not mean that existing water rights cannot be regulated. On the contrary, the Nevada Revised Statutes provide regulatory authority to the State Engineer should adverse effects from the pumping of existing groundwater permits occur.<sup>3</sup>

Permit 64977 also carries a set of specific requirements referred to as permit terms, which provides additional regulatory authority to the State Engineer. The State Engineer finds the regulatory authority within the Nevada Revised Statutes and the terms of Permit 64977 provide additional protection for senior existing water right appropriators and domestic well owners.

The State Engineer finds that the issues related to water availability has been settled with the issuance of Permit 64977 and will not be revisited for a point of diversion and place of use change as proposed under Application 72700. The State Engineer further finds that reducing the annual duty of Permits 64977, 64978 and 66400 is not appropriate and sufficient protections exist within the Nevada Revised Statutes to protect senior existing water right appropriators and domestic well owners from any adverse effects that may occur in the future.

### CONCLUSIONS

#### I.

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

#### II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:<sup>5</sup>

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<sup>3</sup> State Engineer's Ruling No. 5622, dated June 27, 2006, official records in the Office of the State Engineer.

<sup>4</sup> NRS chapters 533 and 534.

<sup>5</sup> NRS § 533.370 (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.**

When Permits 64977, 64978 and 66400 were issued, the State Engineer made a determination, based on the information available at that time, that 2,996 afa of water was available for appropriation in the Dry Valley Hydrographic Basin. Application 72700 seeks to change the point of diversion and place of use of a portion of Permit 64977 and does not request any additional water from the Dry Valley Hydrographic Basin. The State Engineer concludes he is not required to reevaluate the determination as to water availability under the change application and that the proposed change in point of diversion and place of use will not threaten to prove detrimental to the public interest.

**IV.**

The State Engineer concludes that the protest issues regarding water availability were settled by the issuance of Permit 64977; therefore, those protest issues are dismissed.

**RULING**

The protest claims are overruled and Application 72700 is hereby approved subject to:

- 1. Existing rights;
- 2. The payment of the statutory permit fees;
- 3. A monitoring program approved by the State Engineer prior to the diversion of any water appropriated under this permit.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/KE/jm

Dated this 21st day of  
October, 2008.