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

IN THE MATTER OF APPLICATIONS 77681, 77682 AND 77683 FILED TO CHANGE THE POINT OF DIVERSION OF WATER PREVIOUSLY APPROPRIATED WITHIN THE MASON VALLEY HYDROGRAPHIC BASIN (108), LYON COUNTY, NEVADA.	**RULING** **#6000**

GENERAL

I.

On December 12, 2008, Circle Bar N Ranch filed Application 77681 to change the point of diversion of 1.806 cubic feet per second (cfs), not to exceed 18.78 acre-feet annually (afa), of the underground water previously appropriated under Permit 72134 in the Mason Valley Hydrographic Basin. The existing point of diversion is located within the SE¼ NW¼ of 12, T.13N., R.25E., M.D.B.&M. or at a point from which the NE corner of said Section 12 bears N 58 degrees 33 minutes 17 seconds E a distance of 4,355.45 feet. The proposed point of diversion is described as being located within SE¼ NW¼ of Section 12, T.13N., R.25E., M.D.B.&M. or at a point from which the NE corner of said Section 12 bears N 50 degrees 48 minutes 09 seconds E a distance of 3,998.13 feet. The remarks section of the application indicates it is filed in order to correct the point of diversion location identified under Permit 72134.[1]

II.

On December 12, 2008, Circle Bar N Ranch filed Application 77682 to change the point of diversion of 3.3 cfs, not to exceed 775.64 afa, of the underground water previously appropriated under Permit 72135 in the Mason Valley Hydrographic Basin. The existing point of diversion is located within the SE¼ NW¼ of Section 12, T.13N., R.25E., M.D.B.&M. or at a point from which the NE corner of said Section 12 bears N 58 degrees 33 minutes 17 seconds E a distance of 4,355.45 feet. The proposed point of diversion is described as being located within SE¼ NW¼ of Section 12, T.13N., R.25E.,

[1] File No. 77681, official records in the Office of the State Engineer.

M.D.B.&M. or at a point from which the NE corner of said Section 12 bears N 50 degrees 48 minutes 09 seconds E a distance of 3,998.13 feet. The remarks section of the application indicates it is filed in order to correct the point of diversion location identified under Permit 72135.[2]

III.

On December 12, 2008, Circle Bar N Ranch filed Application 77683 to change the point of diversion of 1.0 cfs, not to exceed 166.0 afa, of the underground water previously appropriated under Permit 74571 in the Mason Valley Hydrographic Basin. The existing point of diversion is located within the SE¼ NW¼ of Section 12, T.13N., R.25E., M.D.B.&M. or at a point from which the NE corner of said Section 12 bears N 58 degrees 33 minutes 17 seconds E a distance of 4,355.45 feet. The proposed point of diversion is described as being located within SE¼ NW¼ of Section 12, T.13N., R.25E., M.D.B.&M. or at a point from which the NE corner of said Section 12 bears N 50 degrees 48 minutes 09 seconds E a distance of 3,998.13 feet. The remarks section of the application indicates it is filed in order to correct the point of diversion location identified under Permit 74571.[3]

IV.

Applications 77681, 77682 and 77683 were protested by the Walker Lake Working Group and Mineral County on the following grounds as summarized below:[3]

> 1. There is no unappropriated water at the proposed point of diversion because this ground-water basin in conjunction with Hydrographic Basins 106, 107, 108, 109, 110A, 110B and 110C (Walker River Basin) are currently over appropriated as indicated by falling water levels in Walker Lake.
> 2. The applications should be denied as the transfer would conflict with existing rights in Mason Valley and hydrologically connected downstream basins.
> 3. The applications should be denied as the proposed transfer is contrary to the public interest because the ground-water source is hydrologically connected to Walker Lake, which has dropping water levels and increasing water quality problems jeopardizing the fishery and wildlife dependent on that fishery.
> 4. The State Engineer has designated four of the basins within the Walker River Basin and over-pumping of Smith and Mason Valleys have caused significant drops in ground-water levels thereby removing water from the Walker River to replenish ground-water drawdown resulting in less water flowing into

[2] File No. 77682, official records in the Office of the State Engineer.
[3] File No. 77683, official records in the Office of the State Engineer.

Walker Lake affecting water quality and harm to the ecological health of the lake and devastating the economic base and quality of life in Mineral County.

5. The State Engineer and the State of Nevada have a public trust duty to ensure adequate levels of water in Walker Lake to protect its economic and ecological viability as it asserted in the claim currently pending before the Federal District Court for the District of Nevada; thus, it would be premature for the State Engineer to approve these applications.

FINDINGS OF FACT

I.

The State Engineer finds that the issue of availability of water in the source was thoroughly reviewed when the underlying permits were granted and that would have been the appropriate time to have protested the availability of water. If the Protestants had any issue with the initial granting of these ground-water rights, they should have protested the applications when the notice of original application was made. These rights being sought to be changed are existing permitted ground-water rights. The State Engineer finds these change applications are moving water approximately 600 feet further away from the river, and therefore, if there were any impact on the Walker River, moving of the points of diversion further from the river should lessen the potential for impact.

II.

The central issue raised by the Protestants is the assertion that the permitted and certificated ground-water rights in this and related hydrographic basins are in hydrologic connection with the Walker River and the use of water under those ground-water rights is removing water from the Walker River thereby resulting in harm to the ecological health of the Walker Lake. Therefore, they alleged that any use of the water proposed by the applications threatens to prove detrimental to the public interest.

Nevada Revised Statute § 534.020 provides that subject to existing rights underground waters are subject to appropriation for beneficial use. The State Engineer finds even in basins with some hydrologic connection to a river there is ground water that may be appropriated as was done under the permits sought to be changed under these applications. The State Engineer finds the change application process is not the place to attempt to regulate a ground-water basin by elimination of existing water rights. The permits requested for change here have three different priority dates for the withdrawal of water from the Mason Valley Hydrographic Basin. If the point in time comes that the

State Engineer believes the ground-water basin needs to be regulated and people's water rights curtailed, the doctrine of prior appropriation that is the basis of Nevada Water Law provides that the State Engineer may order that withdrawals be restricted to conform to priority rights. NRS § 534.110(6). Another tool provided by the Legislature is that if in a designated area where in the State Engineer's judgment the ground water is being depleted, he may make such rules, regulations and orders as are deemed essential for the welfare of the area involved. NRS § 534.120. However, the State Engineer finds the change application process is not the place for the use of either of these tools. The State Engineer finds these change applications have no greater impact on the resource, if any, than that approved when the rights were first granted.

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 a permit under an application or change 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.

These applications propose to move the points of diversion even further from the Walker River and the State Engineer concludes that use of water as proposed by these change applications will not conflict with existing rights or threaten to prove detrimental to the public interest.

---

[4] NRS chapters 533 and 534.
[5] NRS § 533.370(5).

IV.

The State Engineer concludes it does not threaten to prove detrimental to the public interest to correct the records of the Nevada Division of Water Resources by the granting of these change applications.

RULING

The Protests to Applications 77681, 77682 and 77683 are hereby overruled and the applications are granted subject to existing rights and the payment of statutory permit fees.

Respectfully submitted,

TRACY TAYLOR, P.E.
State Engineer

TT/SJT/jm

Dated this 3rd day of August, 2009.