

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

IN THE MATTER OF APPLICATIONS)
74737, 74738, AND 75660 FILED TO)
CHANGE THE PUBLIC WATERS)
FROM AN UNDERGROUND SOURCE)
WITHIN THE PAHRUMP VALLEY)
HYDROGRAPHIC BASIN (162), NYE)
COUNTY, NEVADA.)

RULING

6009

GENERAL

I.

Application 74737 was filed on September 6, 2006, by Utilities Inc. of Central Nevada to change the point of diversion, place and manner of use of 0.0069 cubic feet per second (cfs), not to exceed 1.00 acre-foot annually, being a portion of water previously appropriated under Permit 68802. The proposed manner and place of use is for municipal purposes within the Utilities Inc. of Central Nevada's water service territory. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 23, T.20S., R.53E., M.D.B.&M.¹

II.

Application 74738 was filed on September 6, 2006, by Desert Utilities Inc. to change the point of diversion, place and manner of use of 0.0121 cfs, not to exceed 1.76 acre-feet annually (afa), being a portion of water previously appropriated under Permit 68802. The proposed manner and place of use is for municipal purposes within the Utilities Inc. of Central Nevada's water service territory. The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 21, T.19S., R.53E., M.D.B.&M.²

III.

Application 75660 was filed on May 1, 2007, by Utilities Inc. of Central Nevada to change the point of diversion and place of use of 0.124 cfs, not to exceed 3.75 afa, being a portion of water previously appropriated under Permit 67340. The proposed manner and place of use is for municipal purposes within the Utilities Inc. of Central Nevada's water service

¹ File No. 74737, official records in the Office of the State Engineer.

² File No. 74738, official records in the Office of the State Engineer.

territory. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 10, T.20S., R.53E., M.D.B.&M.³

FINDINGS OF FACT

I.

The 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. The perennial yield cannot be more than the natural recharge to a ground-water basin and in some cases is less. If the perennial yield is exceeded, ground-water levels will decline and steady-state conditions will not be achieved, a situation commonly referred to as ground-water mining. Additionally, withdrawals of ground water in excess of the perennial yield may contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased economic pumping lifts, and land subsidence.⁴

The United States Geological Survey (USGS) estimates the perennial yield of the Pahrump Valley Hydrographic Basin is approximately 19,000 acre-feet, while the State Engineer estimates the perennial yield of the Pahrump Valley Hydrographic Basin is approximately 12,000 acre-feet.⁵ The committed ground-water resource in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Pahrump Valley Hydrographic Basin is currently approximately 62,000 afa.⁶ The State Engineer finds that ground water is being depleted in the Pahrump Valley Hydrographic Basin and that the basin was designated by State Engineer Order No. 1107, dated November 8, 1994, to address this situation.

II.

Nevada Revised Statute § 534.120 authorizes the State Engineer to make rules, regulations and orders when ground water is being depleted in a designated area. Nevada Revised Statute § 534.120(3)(e) provides that the State Engineer in connection with the approval of a parcel map in which any parcel is proposed to be served by a domestic well, may require the dedication to a city or county or a designee of a city or county, or require a relinquishment to the

³ File No. 75660, official records in the Office of the State Engineer.

⁴ Office of the State Engineer, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p. 13, Oct. 1971.

⁵ State Engineer's Order No. 1107, dated November 8, 1994, official records in the Office of the State Engineer.

⁶ Nevada Division of Water Resources' Water Rights Database, Hydrographic Basin Summary by Manner of Use, Pahrump Valley Hydrographic Basin (162), July 22, 2009, official records in the Office of the State Engineer.

State Engineer, of any right to appropriate water required by the State Engineer to ensure a sufficient supply of water for each of those parcels, unless the dedication of the right to appropriate water is required by a local ordinance. The intent of this statute was to require water right dedications, to the State or the county if required by a local ordinance, for the creation of new parcels that were proposed to be serviced by domestic wells that would increase the demand on the ground-water resources within a hydrographic basin. The dedicated water right would remove a portion of the active water right inventory in the basin equivalent to the amount of new water demand created by the new domestic well. The dedicated water is to be held in trust for domestic well water service to the specific parcel(s) created thereby entitling the parcel owner to a potential domestic well credit should municipal water service become available. The dedicated water may never be used for any other purposes than to provide domestic well water to the parcel created. Counties that manage and receive the dedication of water for the creation of new parcels may relinquish that water to the State, with the submission of appropriate forms to identify the parcels created, to avoid long term maintenance fees on water right permits that the county may never use or perfect. The State Engineer finds that Nye County has enacted a local ordinance under Title 16.28.170(H)(1)(a) that requires the dedication of water to Nye County for the creation of new parcels from an existing parcel.

III.

An examination of water right permits, including portions of permits owned by Nye County within the Pahrump Valley Hydrographic Basin,⁷ revealed that 30 permits had remarks regarding dedication to the county for the creation of new parcels. These permits are as follows: 17880, 24079, 29050, 43480, 65304, 65465, 65466, 65651, 66449, 66459, 66460, 66464, 66623, 66637, 67044, 67219, 67340, 67394, 68344, 68345, 68791, 68802, 68843, 69101, 69102, 69274, 69275, 69716, 69763, and 73177. The newly created parcels have been extrapolated from information contained within the files for all permits except Permit 43480, which was forfeited on June 24, 2009, and Permit 65651, since both of those files contain information insufficient for said extrapolation. Also noted during this examination was the fact that all water under Permits 67340 and 68802, owned by Nye County, has been sold to third parties that do not occupy the parcels that were created by the original water right dedication. These last two permits, 67340 and 68802, are the water rights that the applications, that are the subject of this ruling, are attempting to change.

⁷ File No. 74737, Spreadsheet of Water Rights, Pahrump Valley Hydrographic Basin (162), July 22, 2009, official records in the Office of the State Engineer.

Permit 67340 dedicated 9.0 acre-feet to Nye County for domestic well service and the parceling of Nye County Assessor Parcel Number (APN) 27-571-36 into four new and smaller parcels 27-571-45, 27-571-46, 27-571-47, and 27-571-48; thereby creating three new parcels. Permit 68802 dedicated 2.24 acre-feet to Nye County for domestic well service and the parceling of Nye County APN 27-391-06 and 27-391-07 into three new parcels 27-391-20, 27-391-21, and 27-391-22; thereby creating one new parcel. Nye County later conveyed all water under these permits to various third parties, who are now attempting to move said water under Applications 74737, 74738, and 75660 to a place of use that is not a parcel of the original dedication. The State Engineer finds that the base right water for Applications 74737, 74738, and 75660 was dedicated to create a domestic well privilege on newly created parcels and to allow the water under this dedication to be used elsewhere would impair existing rights and threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁹

- 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 Pahrump Valley Hydrographic Basin is designated and that Nye County has elected to administer under Title 16.28.170(H)(1)(a) the water rights collected for the creation of new parcels as required by NRS § 534.120(3)(e).

⁸ NRS Chapters 533 and 534.

⁹ NRS § 533.370 (5).

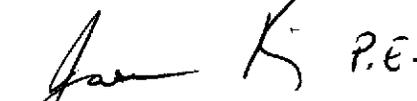
IV.

The State Engineer concludes that to allow water that was dedicated to create domestic well parcels to be used elsewhere or otherwise will impair the value of existing rights and threaten to prove detrimental to the public interest.

RULING

Applications 74737, 74738, and 75660 are hereby denied on the grounds that the proposed use or change threatens to prove detrimental to the public interest.

Respectfully submitted,


TRACY TAYLOR, P.E.
State Engineer

Dated this 3rd day of
September 2009.