

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

IN THE MATTER OF APPLICATIONS 72419)
AND 72420 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE FERNLEY AREA)
HYDROGRAPHIC BASIN (76), WASHOE)
COUNTY, NEVADA.)

RULING
6028

GENERAL

I.

Application 72419 was filed on March 28, 2005, by Barium Inc., to appropriate 1.0 cubic foot per second (cfs) of water from an underground source for mining and milling purposes. The proposed place of use is described as being located within the W½ of Section 13, Lots 1, 6 and 11 of Section 23, Lots 1 and 2, W½ NE¼, W½ of Section 25, Lots 1, 4, 5 and 6, E½ SW¼, E½ of Section 35, all in T.21N., R.24E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 25, T.21N., R.24E., M.D.B.&M. Information contained within the remarks section of the application indicates that the estimated annual use of water would be 80 million gallons per year (mgy).¹

II.

Application 72420 was filed on March 28, 2005, by Barium Inc., to appropriate 1.0 cfs of water from an underground source for mining and milling purposes. The proposed place of use is described as being located within the W½ of Section 13, Lots 1, 6 and 11 of Section 23, Lots 1 and 2, W½ NE¼, W½ of Section 25, Lots 1, 4, 5 and 6, E½ SW¼, E½ of Section 35, T.21N., R.24E., M.D.B.&M. The proposed point of diversion is described as being located within the Lot 5 of Section 35, T.21N., R.24E., M.D.B.&M. Information contained within the remarks section of the application indicates that the estimated annual use of water would be 80 mgy.²

¹ File No. 72419, official records in the Office of the State Engineer.

² File No. 72420, official records in the Office of the State Engineer.

III.

Applications 72419 and 72420 were timely protested by Churchill County on the following summarized grounds:^{1, 2}

1. No permit may be issued, as there is no unappropriated groundwater in the area of the application.
2. The application violates NRS 355.340(4) because it does not specify the proposed method of applying and utilizing water for mining as required.
3. Permitting this application will result in a violation of NRS 533.370.
4. Permitting this application will result adverse affect to the public interest, in particular in relation to the Lahontan Cuthroat [sic] and Cui-ui.
5. Permitting this application will result in an appropriation of Truckee River surface waters.
6. Permitting this application would result in degradation or impairment of water quality in the lower Truckee River.
7. The proposed use conflicts with protectable interests in existing domestic wells as set forth in N.R.S. 533.024.
8. The application is not in the public interest.

IV.

On August 24, 2005, the United States Department of the Interior, Bureau of Land Management, submitted a letter of concern regarding Application 72420 stating:^{1, 2}

The applicant has not filed a notice of intent to proceed with a hardrock mining operation, nor have they applied for a mineral material sale at this location. As a result, the applicant is not approved to conduct surface disturbing activities at the given location.

FINDINGS OF FACT

I.

By State Engineer's Order 699, issued on December 30, 1977, the State Engineer described and designated the Fernley Area Groundwater Basin as a groundwater basin in need of additional administration under the provision of NRS Chapter 534. The State Engineer finds that both the subject points of diversion and a portion of the proposed places of use are located within the designated Fernley Area Groundwater Basin (76) with the other proposed places of use falling within the boundary of the Dodge Flat Basin (82).

II.

The Nevada Division of Water Resources estimates that the perennial yield of the Fernley Area Hydrographic Basin is 600 acre-feet annually.³ The committed groundwater resource for the Fernley Area Hydrographic Basin in the form of permits and certificates issued by the State Engineer to appropriate underground water currently exceeds 11,600 acre-feet annually of water.⁴ The State Engineer finds that the committed groundwater resource of the Fernley Area Hydrographic Basin exceeds the estimated perennial yield.

III.

During parcel ownership verification done through the Washoe and Lyon Counties' Assessor's Offices, the State Engineer finds that the Applicant, under Applications 72419 and 72420, does not own or control the land on which the points of diversion and proposed places of use are located.

IV.

Application 72419 is asking for an Interbasin transfer with the point of diversion falling within the Fernley Area Hydrographic Basin while a portion of the proposed place of use falls within the Dodge Flat Hydrographic Basin.⁵ The State Engineer finds that the export of groundwater from the Fernley Area Hydrographic Basin for use within the Dodge Flat Hydrographic Basin would not be an appropriate use of the limited groundwater resource in a basin where committed groundwater resources greatly exceed the estimated perennial yield and this relevant factor mandates rejection of the applications per NRS § 533.370(6)(e).

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this determination.⁶

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where.⁷

³ Office of the State Engineer, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p.44, Oct. 1971.

⁴ Nevada division of Water Resources, Water Rights Database, Hydrographic Basin Summary Basin 076, Feb. 3, 2010, official records in the Office of the State Engineer.

⁵ NRS § 533.370(6).

⁶ NRS Chapters 533 and 534.

⁷ 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.

Nevada Revised Statute § 533.370(6) provides that in determining whether an application for an interbasin transfer of ground water must be rejected, the State Engineer shall consider: (a) Whether the applicant has justified the need to import the water from another basin; (b) If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out; (c) Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported; (d) Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and (e) Any other factor the State Engineer determines to be relevant.⁸

IV.

The State Engineer concludes that the approval of additional appropriations of water from a groundwater basin whose perennial yield is greatly exceeded by its estimated committed groundwater resource would conflict with existing water rights and would threaten to prove detrimental to the public interest.

V.

Applications 72419 and 72420 have proposed points of diversion within the Fernley Area Hydrographic Basin while a portion of the place of use is within the Dodge Flat Hydrographic Basin.

The State Engineer concludes Applications 72419 and 72420 must be rejected pursuant to NRS § 533.370(6)(e), as the basin of origin has committed groundwater resources that greatly exceed the estimated perennial yield.

⁸ NRS § 533.370(6).

RULING

The protests are upheld in part and Applications 72419 and 72420 are hereby denied on the grounds that their approval would conflict with existing rights and would threaten to prove detrimental to the public interest. No ruling is made on the remaining protest issues.

Respectfully submitted,

K.L. Taylor P.E.

TRACY TAYLOR, P.E.
State Engineer

for

Dated this 8th day of
March, 2010.