

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

IN THE MATTER OF PROTESTED)
APPLICATIONS 78429, 78430 AND 78431)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE ANTELOPE)
VALLEY HYDROGRAPHIC BASIN (93),)
WASHOE COUNTY, NEVADA.)

RULING

#6051

GENERAL

I.

Application 78429 was filed on May 1, 2009, by H & M Properties, LLC to appropriate 0.05 cubic feet per second (cfs), not to exceed 2.0 acre-feet annually (afa), of water from an underground source for domestic purposes. The proposed place of use is described as being located within a portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T.22N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, 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 78430 was filed on May 1, 2009, by H & M Properties, LLC to appropriate 0.05 cfs, not to exceed 2.0 afa, of water from an underground source for domestic purposes. The proposed place of use is described as being located within a portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T.22N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, 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.

Application 78431 was filed on May 1, 2009, by H & M Properties, LLC to appropriate 0.05 cfs, not to exceed 2.0 afa, of water from an underground source for domestic purposes. The proposed place of use is described as being located within a portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T.22N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located

¹ File No. 78429, official records in the Office of the State Engineer.

² File No. 78430, official records in the Office of the State Engineer.

within the SW¼ NE¼ of Section 11, T.22N., R.19E., M.D.B.&M.³ The remarks section of the application indicates the water is to serve one single family residence.

IV.

Applications 78429, 78430 and 78431 were timely protested by Washoe County on the following grounds:^{1, 2, 3}

The above referenced applications propose to appropriate ground water from the Antelope Valley Hydro-graphic Basin.

United States Geologic Survey (USGS) Reconnaissance report #43 estimates the sustainable yield of this basin at 150 acre-feet annually.

Existing appropriations against the ground water resources of this basin consists of approximately 60 acre-feet in the form of permits and certificates appropriated by the Nevada State Engineer. Furthermore, the Washoe County Assessors data indicates 321 existing parcels within this basin, of which approximately 205 have drilled a domestic well and the remaining parcels have the perpetual right to drill a domestic well.

NRS 533.370 (5) 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 Washoe County request that these applications be denied as granting them would be contrary to all the provisions of NRS 533.370 (5) listed above.

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

³ File No. 78431, official records in the Office of the State Engineer.

Engineer finds that in the case of protested Applications 78429, 78430 and 78431 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 78429, 78430 and 78431, if approved and fully utilized, would appropriate 6.0 afa of groundwater within the Antelope Valley Hydrographic Basin. As a comparison, the maximum duty for a domestic well in this area is 2.0 afa for which no permit is required.⁴ 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 de minimis and the approval of such a small quantity would not impair existing groundwater 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.⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- 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.

⁴ NRS § 534.180.

⁵ NRS chapters 533 and 534.

⁶ NRS § 533.370(5).

III.

The State Engineer concludes that the amount of water applied for is de minimis 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 78429, 78430 and 78431 will not threaten to prove detrimental to the public interest.

RULING

The protest to Applications 78429, 78430 and 78431 is overruled and Applications 78429, 78430 and 78431 are hereby approved subject to existing rights and payment of the statutory permit fee.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 27th day of
July, 2010