

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

IN THE MATTER APPLICATIONS 75619,)
75620, 75621, 75622, 75623, 75953, AND)
75954 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE IN THE CHURCHILL VALLEY)
HYDROGRAPHIC BASIN (102) LYON)
COUNTY, NEVADA.)

RULING

#6128

GENERAL

I.

Application 75619 was filed on April 20, 2007, by Eagle Reserve to appropriate 0.025 cubic feet per second (cfs), not to exceed 0.81 acre-feet annually (afa), of underground water from the Churchill Valley Hydrographic Basin for commercial purposes within a portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.18N., R.24E., M.D.B.&M., being Lyon County Assessor's Parcel Number 015-141-03, with the proposed point of diversion being located within above said parcel.¹

II.

Application 75620 was filed on April 20, 2007, by Greener Pastures International, Inc. to appropriate 0.025 cfs, not to exceed 1.79 afa, of underground water from the Churchill Valley Hydrographic Basin for commercial purposes within a portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T.18N., R.24E., M.D.B.&M., being Lyon County Assessor's Parcel Number 018-514-11 with the proposed point of diversion being located within above said parcel.²

III.

Application 75621 was filed on April 20, 2007, by Eagle Reserve to appropriate 0.025 cfs, not to exceed 1.50 afa, of underground water from the Churchill Valley Hydrographic Basin for commercial purposes within a portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T.18N., R.25E., M.D.B.&M., being Lyon County Assessor's Parcel Number 015-263-02, with the proposed point of diversion being located within above said parcel.³

¹ File No. 75619, official records in the Office of the State Engineer.

² File No. 75620, official records in the Office of the State Engineer.

³ File No. 75621, official records in the Office of the State Engineer.

IV.

Application 75622 was filed on April 20, 2007, by Carlene Carlson to appropriate 0.025 cfs, not to exceed 0.60 afa, of underground water from the Churchill Valley Hydrographic Basin for commercial purposes within a portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, T.18N., R.24E., M.D.B.&M., being Lyon County Assessor's Parcel Numbers 018-362-13 and 018-362-14, with the proposed point of diversion being located within APN 018-362-14.⁴

V.

Application 75623 was filed on April 20, 2007, by St. Paul Capital Corporation to appropriate 0.025 cfs not to exceed 1.01 afa of underground water from the Churchill Valley Hydrographic Basin for commercial purposes within a portion of NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T.18N., R.24E., M.D.B.&M., being Lyon County Assessor's Parcel Numbers 018-353-01 and 018-353-02, with the proposed point of diversion being located within APN 018-353-02.⁵

VI.

Application 75953 was filed on June 26, 2007, by Guard, Ltd., a Nevada Limited Partnership, to appropriate 0.20 cfs, not to exceed 1.42 afa of underground water from the Churchill Valley Hydrographic Basin for commercial purposes within a portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T.18N., R.24E., M.D.B.&M., being a portion of Lyon County Assessor's Parcel Number 018-514-07, with the proposed point of diversion being located within said parcel.⁶

VII.

Application 75954 was filed on June 26, 2007, by Guard Ltd., a Nevada Limited Partnership, to appropriate 0.15 cfs, not to exceed 0.83 acre-feet of underground water from the Churchill Valley Hydrographic Basin for commercial purposes within a portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, T.18N., R.24E., M.D.B.&M., being a portion of Lyon County Assessor's Parcel Number 018-512-03, with the proposed point of diversion being located within said parcel.⁷

⁴ File No. 75622, official records in the Office of the State Engineer.

⁵ File No. 75623, official records in the Office of the State Engineer.

⁶ File No. 75953, official records in the Office of the State Engineer.

⁷ File No. 75954, official records in the Office of the State Engineer.

VIII.

Applications 75619, 75620, 75621, 75622, 75623, 75953, and 75954 were timely protested by Churchill County, the Pyramid Lake Paiute Tribe of Indians, and the Truckee-Carson Irrigation District (TCID) on grounds as summarized below:⁸

The Applicant has filed for a water right permit that would threaten to prove detrimental to the public interest - in that there is no unappropriated groundwater available to appropriate; flows to the Lahontan Reservoir will be intercepted causing a reduction in base flow; it would conflict and interfere with the existing water rights of water right owners in the Newlands Project; approval of the application would cause an inability to satisfy prior groundwater and surface water commitments; instream flows would be impaired; delivery costs will increase for senior water right holders in the Newlands Project; the basin is depleted; the Applicant has no financial ability or reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence; and the proposed use of water conflicts with protectable interests in existing domestic wells.

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 sufficient evidence is available in the Office of the State Engineer to evaluate the merits of Applications 75619, 75620, 75621, 75622, 75623, 75953, and 75954 and protests and a hearing is not necessary.

II.

Nevada Revised Statute § 534.120(3)(b) gives the State Engineer the authority to deny an application to appropriate groundwater for any use in an area that can be served by an entity such as a water district or municipality presently engaged in furnishing water to its inhabitants.⁹ Each water right application describes the location of its proposed point of diversion and place of use and these locations are further illustrated by the supporting maps filed in conjunction with the applications.

⁸ File No. 75619, official records in the Office of the State Engineer.

⁹ NRS § 534.120(3)(b).

Utilizing records on file in the Office of the State Engineer, a review was conducted to determine whether the location of the proposed points of diversion and places of use were located within the local municipal water purveyor's service area and, if within the service area, whether there are water lines extending to these locations.

The State Engineer finds the parcels serving as the proposed places of use under Applications 75619, 75622, and 75623 are located within the boundary of the local municipal water purveyor, Silver Springs Mutual Water Company, but no water lines have been constructed at this time to extend service to these parcels. The State Engineer finds that parcels serving as the proposed places of use under Applications 75620, 75621, 75953, and 75954 do not fall within the service area boundary for the water company.

III.

State Engineer's Order No. 1207 was issued on April 22, 2010, and requires in part that all new applications to appropriate water within the Churchill Valley Hydrographic Basin be denied. An exception contained in this Order allows for the approval of applications for the appropriation of groundwater for beneficial purposes that seek to appropriate 2.0 afa or less.¹⁰ Applications 75619, 75620, 75621, 75622, 75623, 75953, and 75954 request the appropriation of 0.81, 1.79, 1.50, 0.60, 1.01, 1.42, and 0.83 afa of groundwater, respectively.

The State Engineer finds that Applications 75619, 75620, 75621, 75622, 75623, 75953, and 75954 each request less than 2.0 afa of underground water from the Churchill Valley Hydrographic Basin for commercial purposes; therefore, Applications 75619, 75620, 75621, 75622, 75623, 75953, and 75954 can be considered for approval under the exception provided for in State Engineer's Order No. 1207.

IV.

Applications 75619, 75620, 75621, 75622, 75623, 75953, and 75954 request the appropriation of 0.81, 1.79, 1.50, 0.60, 1.01, 1.42, and 0.83 afa of groundwater, respectively. Each application is for a separate parcel of land as described in the applications. The amount of groundwater requested is less than the quantity of water allowed for one domestic well (2.0 afa) on

¹⁰ State Engineer's Order No. 1207, April 22, 2010, official records in the Office of the State Engineer.

each parcel for which no permit is required.¹¹ The State Engineer finds that the impact to the groundwater basin is less under the proposed applications than the potential impact of having domestic wells on each parcel.

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 any protectible interests in existing domestic wells and the rights of existing appropriators can be satisfied.¹² It is the policy of this state to recognize the importance of domestic wells as appurtenances to private homes and to protect their supply of water from unreasonable adverse effects, which are caused by municipal, quasi-municipal or industrial uses.¹³ A review of the applications show that they were filed for de minimis commercial purposes not municipal, quasi-municipal or industrial uses. In addition, a review of records on file in the Office of the State Engineer show that the protestants have neither existing domestic wells nor existing groundwater rights within the Churchill Valley Hydrographic Basin.

The Office of the State Engineer conducts an annual groundwater pumpage inventory within the Churchill Valley Hydrographic Basin. For water year 2009, the pumping under permitted water rights was about 1,070 afa. Groundwater levels are measured at selected sites within the basin and indicate a stable water table. There is no data contained within the inventory that would indicate that any water rights of existing appropriators cannot be satisfied.¹⁴ In total, the proposed applications if pumped to their maximum duty of water would add almost 8.0 afa to the current groundwater pumpage within the basin or an increase of about 0.68%.

The State Engineer finds that the quantity of water requested for appropriation under Applications 75619, 75620, 75621, 75622, 75623, 75953, and 75954 is de minimis and the approval of such small quantities will not impair existing water rights within the Churchill Valley Hydrographic Basin and will not conflict with protectible interests in existing domestic wells.

¹¹ NRS § 534.180.

¹² NRS § 534.110(5).

¹³ NRS § 533.024.

¹⁴ *Churchill Valley (Hydrographic Area 8-102) Groundwater Pumpage Inventory Water-Year 2008*, Nevada Division of Water Resources, 2008.

V.

Applications 75619, 75620, 75621, 75622, 75623, 75953, and 75954 seek to appropriate in total less than 8.0 acre-feet per year. By comparison, the storage capacity of Lahontan Reservoir at the spillway level is 289,721 acre-feet and with the addition of 20-inch flashboards will hold 312,984 acre-feet. Annual stream-flow has averaged about 297,000 acre-feet during 1971-2000 in the Carson River upstream of Lahontan Dam although the year to year flow is highly variable. The protests contain numerous claims related to surface water such as flows to the Lahontan Reservoir will be intercepted causing a reduction in base flow; it would conflict and interfere with the existing water rights of water right owners in the Newlands Project; approval of the applications would cause an inability to satisfy prior groundwater and surface water commitments; in-stream flows would be impaired; and delivery costs will increase for senior water right holders in the Newlands Project.

On February 18, 2009, the United States Geological Survey (USGS) released a new study regarding potential impacts of groundwater pumping and of changes in land and water use on streamflow in the Carson River upstream of Lahontan Dam. The USGS analyses showed no conclusive change in Carson River Streamflow from changes in irrigation and groundwater pumping.¹⁵

The State Engineer finds that the proposed pumping of less than 8.0 afa under all applications will have no measurable impact on the Protestants.

VI.

The protest indicates that the Applicants have no financial ability or reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence. The proposed water uses under the applications are for small commercial ventures typical of small businesses. The applications each indicate the estimated cost for completion of the proposed diversion works at \$20,000. The State Engineer finds that there is a reasonable expectation that the Applicants can obtain financing for such a relatively small amount of capital.

¹⁵ Maurer, D.K., Paul, A.P., Berger, D.L., and Mayers, C.J., 2009, *Analysis of Streamflow Trends, Ground-Water and Surface-Water Interactions, and Water Quality in the Upper Carson River Basin, Nevada and California*, U.S. Geological Survey Scientific Investigations Report 2008–5238, 192 p.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁶

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁷

- A. There is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights; or
- 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 Applications 75619, 75620, 75621, 75622, 75623, 75953, and 75954 meet the criteria for exception under State Engineer's Order No. 1207 and can be considered for approval.

IV.

The State Engineer concludes the quantity of water requested is de minimis and will not impair existing water rights and will not conflict with protectible interests in existing domestic wells.

V.

The State Engineer concludes that a commercial use is a preferred use of water and has a high public benefit when considering the minimal amount of water being sought in Applications 75619, 75620, 75621, 75622, 75623, 75953, and 75954.

VI.

The State Engineer concludes that small commercial development is a beneficial use and the Applicants are the current parcel owners, that no other sources of water that can be utilized to service said parcels and the proposed use is a preferred use; therefore, the approvals of Applications

¹⁶ NRS Chapters 533 and 534.

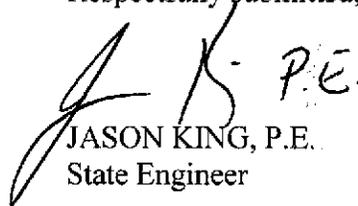
¹⁷ NRS § 533.370(5).

75619, 75620, 75621, 75622, 75623, 75953, and 75954 would not threaten to prove detrimental to the public interest.

RULING

The protests to Applications 75619, 75620, 75621, 75622, 75623, 75953, and 75954 are hereby overruled and the applications are approved subject to existing rights and the payment of the statutory permit fees.

Respectfully submitted,

 P.E.
JASON KING, P.E.
State Engineer

Dated this 26th day of
July, 2011.