

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

IN THE MATTER OF APPLICATION 66954 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
ELDORADO VALLEY HYDROGRAPHIC BASIN)
(167), CLARK COUNTY, NEVADA.)

RULING

#6134

GENERAL

I.

Application 66954 was filed on November 20, 2000, by International Sand & Gravel, Inc. to appropriate 400 acre-feet annually (afa) of water for mining (sand & gravel operation) purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17 and the SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18, T.23S., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 18.¹

II.

Application 66954 was timely protested by the U.S. National Park Service on the following grounds as summarized:¹

The public interest will not be served if water and water-related resources in the nationally important Lake Mead NRA are diminished or impaired as a result of the appropriation and diversion proposed by this application.

If approved, the appropriation and diversion proposed by this application may eventually reduce the discharge from the Black Canyon springs within Lake Mead NRA which are discharge areas for regional ground-water flow systems. The NPS's senior water rights, water resources, and water-related resource attributes would thus be impaired. Such impacts are not in the public interest.

Groundwater resources in Eldorado Valley and Colorado Valley are already overcommitted. In other words, the quantity of permitted withdrawals exceeds the perennial yield of the hydrographic areas.

¹ File No. 66954, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Nevada Revised Statutes § 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 Application 66954 and a hearing is not necessary.

II.

On June 9, 2011, the Office of the State Engineer made inquiries to the Nevada Secretary of State's office, through their official website, regarding the corporate status of International Sand & Gravel, Inc. A search of the corporate information database showed the corporate status as revoked. Further information indicates that an annual list and statutory fee were due on March 31, 2009, and have been due annually since that date.¹

Nevada Revised Statute § 533.325 provides that only a "person" can file an application to appropriate water. In general usage, a "person" is defined to be a human being, firm, labor organization, partnership, association, corporation, legal representative, trustee, etc.² Nevada Revised Statute § 0.039 provides that except as otherwise expressly provided in a particular statute or required by the context, "person" means a natural person, any form of business or social organization, and any other non-governmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. The term does not include a government, governmental agency or political subdivision of a government. Nevada Revised Statute § 533.010 defines person as used in Chapter 533 to include the United States and the State of Nevada. Nevada Revised Statute § 534.014 defines person to include any municipal corporation, power district, political subdivision of this or any state, or an agency of the United States Government.

The State Engineer finds that the Applicant, due to its revoked corporate status, is not a valid corporate entity in the State of Nevada; therefore, it is disqualified from obtaining a water right permit under Nevada water law.

² Black's Law Dictionary, 1028(5th ed. 1979).

III.

The State Engineer finds that Application 66954 has a proposed point of diversion and place of use located within the hydrologic boundaries of the designated Eldorado Valley Hydrographic Basin, which has been described and designated as a groundwater basin in need of additional administration under the provisions of NRS § 534.030.³

IV.

The perennial yield of a groundwater reservoir may be defined as the maximum amount of groundwater that can be salvaged each year over the long term without depleting the groundwater 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 groundwater basin and in some cases is less. If the perennial yield is exceeded, groundwater levels will decline and steady-state conditions will not be achieved, a situation commonly referred to as groundwater mining. Additionally, withdrawals of groundwater 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

An examination of the file of Application indicates that the Applicant has submitted water use requirement data that indicates 33 million gallons annually (~100 afa) is required for the project.⁵ This is a reduction from the amount of water originally requested in the application of 400 afa. Additionally, the Applicant has indicated that the project has a projected life-span of twenty years. The Division of Water Resources estimates that the perennial yield of the Eldorado Valley Hydrographic Basin is 500 afa.⁶ The committed groundwater resource in the form of permits and certificates issued by the State Engineer to appropriate groundwater from the Eldorado Valley Hydrographic Basin currently exceeds

³ State Engineer's Order No. 965, February 10, 1988, 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 See, letter from Steven F. Turner, Attachment A, February 25, 2008, File No. 66954, official records in the Office of the State Engineer.

⁶ State Engineer's Ruling No. 4045, November 30, 1993, official records in the Office of the State Engineer.

2,256 afa, including 512.90 afa in municipal, quasi-municipal, industrial and stockwater uses and 1,743.14 afa for mining and milling purposes.⁷ The State Engineer has in the past issued permits that were in excess of the perennial yield of the basin for mining and milling purposes since they are, by nature of their activity, temporary uses and the basin will reach equilibrium condition once their use ceases. However, current potential withdrawals from the Eldorado Valley Hydrographic Basin exceed the perennial yield by over 4½ times. The potential for groundwater quality degradation and adverse effects upon existing water rights would become greater with any additional groundwater appropriation. Groundwater quality within the basin is generally considered to be fair to poor and is marginal for municipal use.⁸ On March 22, 1993, the State Engineer issued Permit No. 58651 for municipal purposes for 500 afa. Since that time, no new appropriations of groundwater have been granted and applications have been denied, in part, on the basis that the basin is over-appropriated and increased withdrawals could have a significant impact on water of already poor quality.⁹ The State Engineer finds that the existing groundwater rights in the Eldorado Valley Hydrographic Basin exceeds the perennial yield of the groundwater basin. The State Engineer finds that increased withdrawals could have a significant impact on existing water rights.

V.

The State Engineer has previously denied applications for appropriation of groundwater within the Eldorado Valley Hydrographic Basin with the earliest denial occurring in 1984. These denials were based on the grounds that withdrawals of additional groundwater in a basin in which appropriations of groundwater substantially exceed the

⁷ Nevada Division of Water Resources' Water Rights Database, Hydrographic Basin Summary, Eldorado Valley Hydrographic Basin (167), June 9, 2011, official records in the office of the State Engineer.

⁸ F. Eugene Rush and Charles J. Huxel Jr., *Ground-water Appraisal of the Eldorado-Piute Valley Area, Nevada and California*, Water Resources-Reconnaissance Series Report 36, (Department of Conservation and Natural Resources and United States Geological Survey), February 1966.

⁹ State Engineer's Ruling No. 5947, February 11, 2009, State Engineer's Ruling No. 4045, November 30, 1993; State Engineer's Ruling No. 3061, November 9, 1984, official records of in the Office of the State Engineer.

perennial yield of the basin would adversely affect existing rights and be detrimental to the public interest and welfare.⁹

The State Engineer finds that when a previous application within the same hydrologic groundwater basin has been rejected on the grounds that there is no unappropriated water or when its proposed use would conflict with existing rights or would threaten to prove detrimental to the public interest, any new applications within the basin may be similarly denied.

CONCLUSIONS

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁰

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹¹

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. or conflicts with protectible interests in existing domestic wells as set forth in NRS 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

III.

The Applicant is a revoked corporation as determined by the Nevada Secretary of State's office. The State Engineer concludes the Applicant, as a revoked corporation, is ineligible to apply for a water right in the State of Nevada; therefore, to grant a water right would threaten to prove detrimental to the public interest.

IV.

The State Engineer concludes that the granting of a permit under Application 66954 would result in the withdrawal of substantial amounts of groundwater for a 20-year period in a basin where the appropriations of groundwater grossly exceed the perennial yield and would therefore, adversely affect existing rights and threaten to prove detrimental to the public interest.

¹⁰ NRS chapters 533 and 534.

¹¹ NRS § 533.370(5).

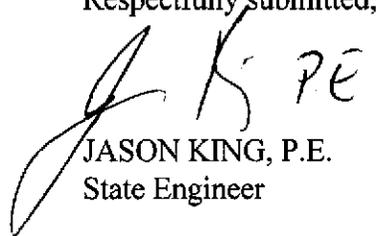
V.

The State Engineer concludes that the potential for groundwater quality degradation and adverse effects upon existing water rights would become greater with any additional groundwater appropriation at this time, and therefore threaten to prove detrimental to the public interest.

RULING

The protest is upheld in part and no ruling made on the merits of other parts. Application 66954 is hereby denied on the grounds that its approval would conflict with existing rights and threaten to prove detrimental to the public interest.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 3rd day of
August, 2011.