

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

IN THE MATTER OF PERMIT 80731 FILED)
TO APPROPRIATE THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE AND)
APPLICATION 80732 FILED TO CHANGE)
THE MANNER OF USE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 26673,)
CERTIFICATE 9552, ALL WITHIN THE)
AMARGOSA VALLEY HYDROGRAPHIC)
BASIN (230), NYE COUNTY, NEVADA.)

RULING
#6147

GENERAL

I.

Application 80731 was filed April 1, 2011, under the name of Desert Farms, Inc. to appropriate 0.003 cubic feet per second (cfs) of underground water, not to exceed an annual duty of 2.0 acre-feet annually (afa). The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 24, T.15S., R.49E., M.D.B.&M. It is the Applicant's intention to appropriate water from this well for commercial purposes within Sections 13, 24 and the N½ of Section 25, all within T.15S., R.49E., M.D.B.&M.¹

II.

Application 80732 was filed April 1, 2011, under the name of Desert Farms, Inc. to change the manner of use of 0.004 cfs, not to exceed 0.3285 million gallons annually (equivalent to 1.0 afa), of the water previously appropriated under Permit 26673, Certificate 9552. The proposed point of diversion is identical to that described in Application 80731. It is the Applicant's intention to replace the quasi-municipal use issued under Permit 26673 with a commercial use, without changing the point of diversion or place of use.²

III.

The filing of Application 80731 was timely protested by Nye County, Nevada, on grounds which can be summarized as follows:¹

¹ File No. 80731, official records in the Office of the State Engineer.

² File No. 80732, official records in the Office of the State Engineer.

1. There is no additional underground water available for appropriation from the Amargosa Valley Hydrographic Basin, in that the groundwater basins committed resource exceeds its perennial yield.
2. The approval of Application 80731 would impair Nye County's senior water rights represented by Permits 69313 and 69314. These permits will provide water for the Amargosa Valley Science and Technology Park.
3. The approval of Application 80731 would impair the senior water rights held by the citizens of Nye County.³

IV.

Application 80732 was also protested by Nye County, Nevada, on different grounds that can be summarized as follows:²

Pursuant to NRS § 533.370 1.(c)(1) and (2), the Applicant has failed to provide satisfactory proof of intention in good faith to construct works necessary to apply water to its intended beneficial use. The existing Bureau of Land Management (BLM) authorized well site right-of-way is 100 feet by 100 feet and lies within a proposed energy development currently under consideration by the BLM.

FINDINGS OF FACT

I.

Contained within the protests filed by Nye County, Nevada, was a request that the State Engineer deny the subject applications without further consideration or an administrative hearing. 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 a water right application. The State Engineer finds that in the case of Applications 80731 and 80732 there is no need to supplement the existing records of his office with testimony and evidence relating to these applications and their associated protests.

II.

The manner in which underground water can be appropriated within the Amargosa Valley is regulated through a series of written rulings and orders that have been issued by a succession of State Engineers. Under the current set of restrictions, future appropriations of underground water may include the following exceptions:

³ These water rights were not identified in the protest.

1. Applications filed to correct an illegal water use as directed by the Office of the State Engineer.
2. Environmental applications filed pursuant to NRS §§ 533.437 and 533.4377.
3. Applications which seek to appropriate an annual duty of water of 2.0 acre-feet or less.

The Protestant contends that Application 80731 cannot be approved due to the fact that the amount of underground water committed under existing permits and certificates exceeds the perennial yield of the Amargosa Valley Hydrographic Basin. The State Engineer agrees that this imbalance does exist, but finds that Application 80731 meets the criteria represented by Exception No. 3.

III.

It is also the Protestant's contention that the appropriation of an additional 2.0 acre-feet of water through any permit issued under Application 80731 would adversely impact Permits 69313 and 69314 both of which are held by the Protestant. An examination of the Lathrop Wells area provided by the Nevada Division of Water Resources MapGuide feature indicates that one mile separates Nye County's and Desert Farms, Inc.'s well sites. It was also observed that the Lathrop Wells portion of the Amargosa Valley does not host a concentration of either permitted or domestic wells. Water level measurements taken at the NDOT Well located within Section 18, T.15S., R.50E., M.D.B.&M., for the period from 2004 through 2008, show a 0.07 ft water level decline.⁴

The State Engineer finds that there is a reasonable assumption that the introduction of an additional 2.0 afa of underground water from a well site that is over one mile from the Protestant's well will not adversely impact senior underground water rights held by the Protestant or the more distant well sites operated by the citizens of Nye County.

IV.

Application 80732 does not request an additional appropriation of water, rather it proposes to change the manner of use issued for Permit 26673, Certificate 9552 from quasi-municipal to commercial purposes. Certificate 9552 has an associated non-use issue, but has remained active through the approval of a 2010 Application for Extension of Time to Avoid Forfeiture, which was granted until September 21, 2011. Information contained within this extension indicates that Certificate 9552 was used to support the reclamation of the old Jackass Aero-park that is located, near Lathrop Wells, upon land administered by the BLM. It was also stated that the lease

⁴ Official records in the Office of the State Engineer, Water Level Database, August 4, 2011.

agreement between the Applicant and the BLM for the site had expired, but a new lease granting right of way to the well site had been reached. It was further explained that this lease will terminate on December 31, 2038. At the time of the filing of the extension, it was thought that the BLM may require additional remediation at the former airfield. If this task failed to fully materialize, the Applicant also stated that at a future date a change application may be filed to change the existing manner of use.⁵ This possibility became a reality when Application 80372 was filed. The State Engineer finds that the water right that forms the base right permit for Application 80732 is considered to be in good standing and that the change proposed under Application 80732 can be considered.

V.

Nye County, Nevada, based its protest to Application 80732, in part, on the claim that the existing BLM well right of way is located within a proposed solar energy development currently under consideration by the BLM. The State Engineer finds that this issue falls outside of the State Engineer's areas of responsibility.

VI.

A second protest issue questions the Applicant's ability to construct the works of diversion necessary to apply the water it has requested to its intended beneficial use. Returning to the 2010 extension of time, Desert Farms, Inc. advised the Nevada Division of Water Resources that between October 8, 2009 and June 24, 2010, 103,745 gallons of water had been pumped from this well to support the airfield demolition. During this period, the works of diversion were in place and capable of operation. The 2010 Amargosa groundwater inventory confirms that the well was equipped, with a new meter reading 103,700 gallons.⁶ The State Engineer finds that the Protestant's claim regarding the Applicant's ability to construct the works of diversion is moot, since the majority of this work, by 2010, had already been accomplished.

⁵ File No. 64766, official records in the Office of the State Engineer.

⁶ Ground Water Pumpage Inventory Amargosa Valley, No. 230, 2010, p. 5, official records in the Office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting an application or change application that requests to appropriate the public waters where:⁸

- 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.

Groundwater appropriations within the Amargosa Valley have been regulated by the Office of the State Engineer to a point where only a select group of water right applications can be considered for approval. Among these exceptions are those applications that request an annual duty of water of 2.0 acre-feet or less. Should a permit be issued under Application 80731 the maximum amount of water that could be appropriated on a yearly basis would be capped at 2.0 acre-feet. At this level, Application 80731 qualifies for consideration. It has also been determined that the well site that would service the Applicant's proposed manner of use is located more than one mile from the Protestant's areas of concern. Under these circumstances the State Engineer concludes that the approval of Application 80731 would not conflict with existing water rights within the Amargosa Valley Hydrographic Basin.

IV.

Application 80732 does not represent an additional appropriation of underground water, only a change in the manner of use from quasi-municipal to commercial. The State Engineer concludes that this change will not adversely impact existing water rights or threaten to prove detrimental to the public interest.

⁷ NRS Chapters 533 and 534.

⁸ NRS § 533.370(5).

RULING

The protests to Applications 80731 and 80732 are overruled and Applications 80731 and Application 80732 are hereby approved subject to existing water rights and the payment of the statutory permit fees.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 24th day of
August, 2011.