

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

IN THE MATTER OF APPLICATION 79981)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE ANTELOPE)
VALLEY HYDROGRAPHIC BASIN (106),)
MONO COUNTY, CALIFORNIA FOR USE)
IN DOUGLAS COUNTY, NEVADA.)

RULING

#6151

GENERAL

I.

Application 79981 was filed on July 8, 2010, by David W. Park, LLC, to appropriate 5.57 cubic feet per second (cfs) from an underground source for irrigation purposes within portions of Sections 1 and 12, T.9N., R.22E., M.D.B.&M., within Nevada. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T.9N., R.23E., M.D.B.&M. within Mono County, California.¹

FINDINGS OF FACT

I.

Application 79981 requests a new appropriation of water within Antelope Valley. The point of diversion is located within Antelope Valley in Mono County, California and the proposed place of use is within the Antelope Valley Hydrographic Basin (106), Douglas County, Nevada. The application was filed to provide supplemental underground irrigation water for 400 acres of land irrigated with decreed surface water from the West Walker River.

II.

The State Engineer issued Order No. 714, dated May 25, 1978, designating and describing the portion of the Antelope Valley Hydrographic Basin that lies within the State of Nevada as a groundwater basin in need of additional administration under the provisions of Nevada Revised Statutes Chapter 534.² The State Engineer issued Order No. 1178, dated July

¹ File No. 79981, official records in the Office of the State Engineer.

² State Engineer's Order No. 714, dated May 25, 1978, official records in the Office of the State Engineer.

29, 2005, further designating the portion of Antelope Valley Hydrographic Basin that lies within Nevada by limiting new appropriations to:³

1. Those applications filed for commercial, industrial, stockwater or wildlife purposes and only those applications that seek to appropriate 1,800 gallons per day or less and where the property is zoned for such purposes.
2. Those applications for environmental permits filed pursuant to NRS 533.437.

III.

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

IV.

The total estimated perennial yield of the Antelope Valley Hydrographic Basin is approximately 6,200 acre-feet annually (afa), 2,600 afa that lie within Nevada and 3,600 afa that lie within California.⁵ The committed water resource in the form of permits and certificates to appropriate underground water from the portion of the Antelope Valley basin that lies within Nevada currently exceeds 6,000 afa.⁶ A review of records on file in the Office of the State Engineer indicates that over 300 domestic wells have been drilled within the Nevada portion of the Antelope Valley Hydrographic Basin. A domestic well is allowed a maximum duty of 2 afa.

³ State Engineer's Order No. 1178, dated July 29, 2005, 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 Patrick A. Glancy, *Water-Resources Appraisal of Antelope Valley and East Walker Areas, Nevada and California*, Water Resources-Reconnaissance Series Report 53, (Department of Conservation and Natural Resources and U.S. Geological Survey), 1971.

⁶ Hydrologic Basin Abstract, Water Rights Database, Basin 106, March 4, 2011, official records in the Office of the State Engineer.

A review of records on file in the Office of the State Engineer shows that two previous applications to appropriate 0.1 cfs each of underground water from the Antelope Valley Hydrographic Basin were denied because the committed ground water resource exceeded the estimated perennial yield and granting additional water rights from this limited groundwater resource would adversely affect existing rights and threaten to prove detrimental to the public interest.⁷ The State Engineer finds that previous applications to appropriate underground water have been denied within the Antelope Valley Hydrographic Basin. The State Engineer finds that existing groundwater rights exceed the estimated perennial yield of the Antelope Valley Hydrographic Basin.

V.

State Engineer's Order No. 1178 provides for new appropriations up to 2.02 afa. Approving a supplemental groundwater right for 1,600 afa does not satisfy the intent of Order No. 1178 and thus does not protect the resource.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁹

- 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 protectable 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 Statutes § 533.515(1) states:

No permit for the appropriation of water or application to change the point of diversion under an existing water right may be denied because of the fact that the point of diversion described in the application for the permit, or any portion of the works in the application described and to be constructed for the purpose of storing, conserving, diverting or distributing the water are situated in any other

⁷ State Engineer's Ruling No. 5128, official records in the Office of the State Engineer.

⁸ NRS chapters 533 and 534.

⁹ NRS § 533.370(5).

state; but in all such cases where the place of intended use, or the lands, or part of the lands to be irrigated by means of the water, are situated within this state, the permit must be issued as in other cases, pursuant to the provisions of NRS 533.324 to 533.450, inclusive, and chapter 534 of NRS.

The State Engineer concludes that NRS § 533.515 does not give him jurisdiction over the appropriation of water in California, but rather gives him jurisdiction to regulate its use in Nevada and determine whether there is water available for appropriation, whether the proposed use will conflict with existing rights or protectable interests in domestic wells or threatens to prove detrimental to the public interest.

IV.

The State Engineer concludes the committed groundwater resources, including domestic wells, within the portion of the Antelope Valley Hydrographic Basin that lies within the state of Nevada, currently exceed the estimated perennial yield of 2,600 afa within Nevada. It should be noted that the demands on the groundwater resources within the California portion of the Antelope Valley Hydrographic Basin are unknown. The State Engineer concludes that the approval of the subject application would result in the withdrawal of ground water in substantial excess of the perennial yield, and therefore, would conflict with existing rights and would threaten to prove detrimental to the public interest.

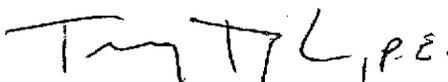
V.

The State Engineer concludes that previous applications to appropriate underground water for amounts less than that being requested under Application 79981 have been denied; therefore, Application 79981 must also be considered for denial.

RULING

Application 79981 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,


for JASON KING, P.E.
State Engineer

Dated this 14th day of
October, 2011.