

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

IN THE MATTER OF APPLICATIONS 79713,)
79714, 79715 AND 79716 FILED TO)
CHANGE THE PLACE OF USE OF THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE SPRING VALLEY)
HYDROGRAPHIC BASIN (184), WHITE)
PINE COUNTY, NEVADA.)

RULING

#6155

GENERAL

I.

Application 79713 was filed on March 22, 2010, by the Southern Nevada Water Authority to change the place of use of water heretofore appropriated under Permit 71603. The proposed use will be unchanged from April 1 to October 1 of each year. The proposed place of use is described as being located within portions of the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 12, NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24, T.12N., R.67E., M.D.B.&M. The proposed manner of use is unchanged and for irrigation purposes. The proposed point of diversion is unchanged and described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.12N., R.67E., M.D.B.&M. ¹

II.

Application 79714 was filed on March 22, 2010, by the Southern Nevada Water Authority to change the place of use of water heretofore appropriated under Permit 74274. The proposed use will be unchanged from April 1 to October 1 of each year. The proposed place of use is described as being located within portions of the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 12, NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24, T.12N., R.67E., M.D.B.&M. The proposed manner of use is unchanged and for irrigation purposes. The proposed point of diversion is unchanged and described as being located within SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.12N., R.67E., M.D.B.&M. ²

¹ File No. 79713, official records in the Office of the State Engineer.

² File No. 79714, official records in the Office of the State Engineer.

III.

Application 79715 was filed on March 22, 2010, by the Southern Nevada Water Authority to change the place of use of water heretofore appropriated under Permit 71526. The proposed use will be unchanged from April 1 to October 1 of each year. The proposed place of use is described as being located within portions of the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 12, NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24, T.12N., R.67E., M.D.B.&M. The proposed manner of use is unchanged and for irrigation purposes. The proposed point of diversion is unchanged and described as being located within SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T.12N., R.67E., M.D.B.&M.³

IV.

Application 79716 was filed on March 22, 2010, by the Southern Nevada Water Authority to change the place of use of water heretofore appropriated under Permit 71525. The proposed use will be unchanged from April 1 to October 1 of each year. The proposed place of use is described as being located within portions of the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 12, NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24, T.12N., R.67E., M.D.B.&M. The proposed manner of use is unchanged and for irrigation purposes. The proposed point of diversion is unchanged and described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T.12N., R.67E., M.D.B.&M.⁴

V.

Applications 79713 through 79716 were timely protested by the Confederated Tribes of the Goshute Reservation, U.S. Fish and Wildlife Service, Long Now Foundation and Ely Shoshone Tribe.

VI.

A summary of the protests filed by the Confederated Tribes of the Goshute Reservation are:

Protestant asserts as reasons and grounds for this Protest that: (1) there is insufficient unappropriated water in the proposed source of supply to support the application or the proposed use; (2) the proposed use would conflict impermissibly with

³ File No. 79715, official records in the Office of the State Engineer.

⁴ File No. 79716, official records in the Office of the State Engineer.

existing water rights, including federally reserved water rights, and protectable interests in domestic wells; (3) the proposed use would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the basin from which the water is proposed to be exported; (4) the proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the water is proposed to be exported; (5) the proposed action is not an appropriate long-term use of water; (6) the Applicant has not justified the need to import water from another basin; (7) the Applicant does not have and is not effectively implementing an adequate or reasonable plan for conservation in the area of proposed use; and (8) the Applicant has not demonstrated the good faith intent of financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.

VII.

A summary of the protests filed by the U. S. Fish and Wildlife Service are that they do not object to the protested applications being approved provided that any such approval be issued subject to the conditions and limitations in the protested applications' base rights, which it appears intended to replace. If the Applicant intends, or the State Engineer finds, that any of the elements of the protested applications are materially different from or are in excess of those in the protested applications' base rights, the U. S. Fish and Wildlife Service requests that the applications be denied.

VIII.

A brief summary of the protests filed by the Long Now Foundation questions the Applicant's ability to construct a communal piping system to support the irrigation network, the submittal of details of the communal piping system, that the Applicant is ensuring adequate water supplies for the Las Vegas Valley, that the place of use will be improved and/or expanded, that the water will be exported from the basin, that there is no water available for appropriation and the applications will have detrimental effects to the public interest.

IX.

A summary of the protests filed by the Ely Shoshone Tribe are:

1. There is insufficient water available in the proposed source of supply.
2. The applications and proposed use would conflict with existing water rights and domestic wells.
3. The change proposed in the applications would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the basin from which the export is proposed.
4. The application and proposed change would have an adverse impact on wildlife and wildlife ecosystems in the basin from which the export is proposed and in hydrologically connected basins.
5. The proposed changes would limit economic growth and development in the basin from which the export is proposed.
6. The proposed change is not an appropriate long-term use of Nevada's water.
7. The Applicant has not justified the need to import water from another basin.
8. The Applicant has not implemented a sufficient conservation plan.
9. The Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.
10. The right to amend the submitted protest.
11. Incorporation of other protests.

FINDINGS OF FACT

I.

The protests filed by the Ely Shoshone Tribe and Confederated Tribes of the Goshute Reservation frequently refer to the provisions in Nevada Revised Statute (NRS) § 533.370(6), which apply to applications for an interbasin transfer of water. An examination of the applications and associated supporting maps show that the existing and proposed and places of use are within the Spring Valley Hydrographic Basin. The State Engineer finds that the applications considered here do not seek to export water from the Spring Valley Hydrographic Basin; therefore, NRS § 533.370(6) does not apply.

II.

The applications considered here are applications to change water that has been previously appropriated and accounted for in the Spring Valley Hydrographic Basin groundwater budget. A review of records on file in the Office of the State Engineer show the committed groundwater resource of the Spring Valley Hydrographic Basin is significantly less than the estimated perennial yield.

The existing water rights have been placed to historic beneficial use for irrigation purposes at existing points of diversion and places of use. A review of records on file in the Office of the State Engineer do not indicate any significant drawdown in the groundwater aquifer.⁵ A review of well driller reports on file in the Office of the State Engineer show only one domestic well located within 2,500 feet of the proposed points of diversion and that domestic well is located within the SW $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 12, T.12N., R.67E., M.D.B.&M. and is within the Applicant's place of use.⁶

The State Engineer finds that the applications do not seek to appropriate additional groundwater from the Spring Valley Hydrographic Basin. The State Engineer finds the proposed change applications will only change the place of use within the Spring Valley Hydrographic Basin and will not increase the groundwater demand in the basin. The State Engineer finds that there will be no significant difference between the existing and proposed places of use on the groundwater aquifer; therefore, the change applications will not conflict with existing rights or protectable interests in domestic wells.

III.

The State Engineer finds the place of use of the applications is located on private lands. The protests pertaining to recreational, aesthetic and cultural resources are not within the considerations found under Nevada water law. The State Engineer's authority in the review of water right applications is limited to considerations identified in Nevada's water law and policy statutes. The State Engineer finds these protest claims are dismissed.

⁵ Water Level Database (WELLNET), Spring Valley Hydrographic Basin (184), March 16, 2011, official records in the Office of the State Engineer.

⁶ Well Log Database, Well Log No. 16139, September 9, 2011, official records in the Office of the State Engineer.

IV.

Nevada Revised Statute § 533.367, requires that before a person may obtain the right to the use of the water from a spring source or from water that seeps to the surface, it must insure that wildlife, which customarily used the water will have access to it. The State Engineer finds that the applications considered here are from an underground source and NRS § 533.367 applies to surface water sources; therefore, the protest issue is without merit.

V.

The protests filed by the U. S. Fish and Wildlife Service states that they do not object to the protested applications if they are subject to the terms of the base rights. The protested applications, if permitted will include a standard term used by the State Engineer, with the requirement that this permit is issued subject to the terms and conditions imposed on the base right. Although the protest issue is not a valid ground for rejecting the change applications under NRS § 533.370(5), the State Engineer finds this protest issue is satisfied with the above-mentioned permit term, which makes the protested applications subject to the terms of their base rights.

VI.

The protest filed by the Long Now Foundation concern the amount of water available for appropriation, the Applicant's ability to construct the proposed works and that the water will be potentially exported from the Spring Valley Hydrographic Basin. The Applicant has purchased this existing ranching operation along with other ranches in Spring Valley. The purpose of the applications is to rectify any discrepancy in the existing water rights versus the actual place of use and to use more efficient irrigation by placing the existing water rights to beneficial use. The State Engineer finds that the applications are not requesting the export of water and the manner of use will remain irrigation.

A review of the records on file in the Office of the State Engineer shows the current estimates of the perennial yield exceed the committed groundwater resource and the proposed change of existing groundwater is already accounted for in the groundwater basin budget. The State Engineer finds that there is a reasonable expectation that the Applicant will construct the proposed works and place the water to beneficial use. The State Engineer finds the applications considered here are applications to change water

that has been previously appropriated. The State Engineer finds that the applications considered in this ruling do not export water and will not increase the groundwater demand within the Spring Valley Hydrographic Basin; therefore, the protest is without merit.

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 a permit under a 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.

The applications considered here are applications to change existing water rights and water will not be exported from the Spring Valley Hydrographic Basin. The State Engineer concludes that many protest grounds pertain to new appropriations of water and the export of water from the Spring Valley Hydrographic Basin. Since the applications are not requesting a new appropriation of water and are not seeking to export any water, the State Engineer concludes that those protest issues may be overruled.

IV.

The State Engineer concludes that the applications considered in this ruling will not conflict with existing water rights and protectable interests in domestic wells, and will not threaten to prove detrimental to the public interest.

⁷ NRS Chapters 533 and 534.

⁸ NRS § 533.370(5).

V.

The State Engineer concludes this is not an interbasin transfer of groundwater and the provisions of NRS § 533.370(6) do not apply. Based on the findings, the State Engineer concludes the remaining protest issues are without merit and may be overruled.

RULING

The protests are overruled and Applications 79713, 79714, 79715, and 79716 are hereby approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 2nd day of
December, 2011.