

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

IN THE MATTER OF APPLICATION 75531 )  
FILED TO CHANGE THE POINT OF )  
DIVERSION OF A PORTION OF THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
PREVIOUSLY APPROPRIATED UNDER )  
PERMIT 27331, CERTIFICATE 9514, WITHIN )  
THE CARSON VALLEY HYDROGRAPHIC )  
BASIN (105), DOUGLAS COUNTY, NEVADA. )

**RULING**

**#6177**

**GENERAL**

**I.**

Application 75531 was filed on April 9, 2007, by the Donna I. Buddington Family Trust, dated May 24<sup>th</sup>, 2001, to change the point of diversion of 0.2175 cubic feet per second (cfs), not to exceed 40.0 acre-feet seasonally, a portion of water previously appropriated under Permit 27331, Certificate 9514, from an underground source for irrigation purposes. The place of use is described as being 6.1 acres within the NE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> of Section 3, and 3.9 acres within the NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> of Section 2, T.12N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> of Section 2, T.12N., R.19E., M.D.B.&M. The existing point of diversion is described as being located within the SE<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> of Section 3, T.12N., R.19E., M.D.B.&M. The period of use, May 1<sup>st</sup> to October 1<sup>st</sup>, is unchanged.<sup>1</sup>

**II.**

Application 75531 was protested by the Pyramid Lake Paiute Tribe (Tribe) on grounds as summarized below:

1. Granting the application would threaten to prove detrimental to the public interest in light of the over-appropriation of the groundwater available in the basin resulting in the inability of the perennial yield to serve existing permits and commitments with groundwater, and in light of the obligations of the State Engineer pursuant to NRS Chapters 533, 534 and 278 to require that there be adequate plans to protect existing rights, uses and commitments of groundwater and to exercise all appropriate authority

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<sup>1</sup> File No. 75531, official records in the Office of the State Engineer.

and discretion to control over-demand on the source and to protect both the public and other right holders of surface water and groundwater rights.

2. Upon information and belief, the rights in question have been forfeited and/or abandoned and the application should therefore be denied.
3. Granting the application would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Indian Reservation was created and to the public interest by depleting flows in the Carson River and to Lahontan Reservoir, for the reasons stated above and because of the connection, both legal and physical, between the groundwater and surface water in the basin to the detriment of senior water right holders in the Newlands Project who are entitled to divert Truckee River water to make up for insufficient Carson River flows, which are the primary source to satisfy their rights and would impact Pyramid Lake and its fishery and impair instream flows.
4. Granting the application would threaten to prove detrimental to the public interest in ways that are not yet known by the Protestant, but which may arise before the application is actually considered by the State Engineer.
5. Granting the application would threaten to prove detrimental to the public interest.
6. This Protestant incorporates any other protest filed by any other Protestant.

#### **FINDINGS OF FACT**

##### **I.**

Nevada Revised Statute (NRS) § 533.365(4) 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 Nevada. The State Engineer finds that in the case of protested Application 75531 there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

##### **II.**

The Protestant asserts that the permitted and certificated groundwater rights in the Carson Valley Hydrographic Basin far exceed the estimated perennial yield, and as such, the pumping of groundwater is or will be taking flows in the Carson River surface water that is claimed by senior water right holders in the Newlands Project; thus, the use of groundwater is impacting existing rights, the Truckee River and Pyramid Lake and its fishery. It should be noted that the Protestant is not a water right holder on the Carson River, does not have any existing decreed right to

Carson River surface water, and is not the owner of record of any groundwater within the Carson Valley Hydrographic Basin. Pyramid Lake is the terminus of the Truckee River.

The Nevada Division of Water Resources (Division) spends a significant amount of time in the Carson Valley area performing fieldwork. Pumpage inventories have been conducted since 1987 to monitor the quantity of water pumped in the Carson Valley Hydrographic Basin. In conjunction with this field work, the Division enforces permit compliance and investigates improper use of groundwater. Also, water levels are measured at selected sites and field investigations are conducted throughout the year as needed.

When water rights are dedicated for municipal use, the dedication policy of the Division is designed to cover the maximum amount of water ever anticipated to be used, and historically actual use has been demonstrated to be less than the total amount dedicated. Relinquishments of water rights are also required for domestic well subdivisions even though domestic wells normally are exempt from the permitting provisions of Nevada water law. Finally, the Division has consistently performed its obligation to protect existing rights, and to assure water is available for development, through signatory authority over subdivision maps.

Water level data collected by the Division fails to indicate any significant declining trends that would support the allegation that the basin is over-appropriated.<sup>2</sup> In addition, annual surface-water discharges as measured at the United States Geological Survey gauge for the Main Stem of the Carson River near Carson City actually increased over 4% for the 30-year period of 1976 through 2005 when compared to the prior 30-year period.<sup>3</sup>

In State Engineer's Ruling No. 5791, an in-depth analysis of the groundwater resources showed the Carson Valley Hydrographic Basin is not severely over-appropriated and is not over-pumped.<sup>4</sup> The State Engineer finds that the analysis contained in State Engineer's Ruling No. 5791 is still valid, and hereby adopts the findings and conclusions of State Engineer's Ruling No. 5791.

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<sup>2</sup> Water Level Data for Carson Valley Hydrographic Basin (105), official records in the Office of the State Engineer.

<sup>3</sup> *Evaluation of Available Stream Flow Data for the Carson River and Review of Random Lithologic Records of Drilled Wells within the Carson Valley, Douglas County, Nevada*, prepared by R.O. Anderson Engineering, Inc. in collaboration with Turnipseed Engineering, Ltd., p. 8.

<sup>4</sup> State Engineer's Ruling No. 5791, October 23, 2007, official records in the Office of the State Engineer.

The State Engineer finds that the Division has and continues to perform its obligations in regards to management of the water resources of the Carson Valley Hydrographic Basin. The State Engineer further finds that the Carson Valley Hydrographic Basin is not over-appropriated and an analysis of the data collected by the Division, such as, pumpage inventories and water levels, support this finding. The State Engineer finds that the water sought for change under change Application 75531 has already been accounted for in the groundwater basin budget and therefore, will have no additional effect on the groundwater resource.

### III.

Application 75531 is not requesting a new appropriation of water. Rather, the application is seeking to change only the point of diversion of an existing certificated water right. Permit 27133, Certificate 9514, provides the Applicant with a supplemental groundwater right to its decreed Mott Creek surface water rights. Under the existing water right, the Applicant obtains water from a point of diversion located within the SE¼ SW¼ of Section 3, T.12N., R.19E., M.D.B.&M., and Application 75531 would move the point of diversion approximately 3,300 feet to the east - northeast to the Applicant's property.<sup>1</sup>

The Applicant states that the water right in question has neither been forfeited nor abandoned. Historically, groundwater has been delivered to the Applicant's property via an irrigation ditch from the existing well under Permit 27331, Certificate 9514. However, due to recent home construction, it has become difficult for the Applicant to reliably obtain water. Therefore, Application 75531 was filed to transfer the point of diversion to a well located directly on the Applicant's property to allow easier access to the Applicant's certificated supplemental groundwater right.<sup>5</sup>

The State Engineer finds that the application before him changes an existing certificated water right and the application does not seek a new appropriation of water. The State Engineer finds the proposed change will have no additional impact on the Carson Valley Hydrographic Basin and no effect upon the Protestant.

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<sup>5</sup> See, letter of August 6, 2007, File No. 75531, official record in the Office of the State Engineer.

#### IV.

Application 75531 was protested on the grounds that the water rights have been forfeited and/or abandoned. A review of File No. 27331, shows that the water right is certificated and in good standing at this time.<sup>6</sup> Nevada Revised Statute § 533.030 provides that water may be appropriated for a beneficial use and not otherwise. Nevada Revised Statute § 533.035 provides that beneficial use is the basis, the measure and the limit of the right to the use of water. Abandonment is a question of fact to be determined from all the surrounding circumstances and an intent to forsake the water right is a necessary element. In the case of Permit 27331, Certificate 9514, the Applicant has filed a change application to move the point of diversion to a well located on the Applicant's property to allow for easier access to the water. This is evidence that the Applicant does not intend to abandon its water right and seeks to ensure that the water can be placed to beneficial use as needed to supplement its surface water.

The State Engineer finds that the water sought for change under Application 75531, represented by a portion of Permit 27331, Certificate 9514, is currently in good standing and is not subject to abandonment or forfeiture.

#### V.

The Protestant alleges that granting the application would threaten to prove detrimental to the public interest in ways that are not yet known to it, but which may arise before the application is actually considered by the State Engineer. The State Engineer finds that NRS § 533.365 provides that a protest must set forth with reasonable certainty the ground of the protest, which shall be verified by the affidavit of the protestant, his agent or attorney and this protest ground does not set forth its ground with reasonable certainty and is thereby overruled.

#### VI.

The Protestant alleges that granting the application would threaten to prove detrimental to the public interest and the protest seeks to incorporate any other issues raised by any other protestant. The State Engineer finds that NRS § 533.365 provides that a protest must set forth with reasonable certainty the ground of the protest, which shall be verified by the affidavit of the protestant, his agent or attorney, and this protest ground does not set forth its ground with reasonable certainty and is thereby overruled. It is noted that there are no other protests to the application.

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<sup>6</sup> File No. 27331, 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.<sup>7</sup>

### II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:<sup>8</sup>

- 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.

Application 75531 seeks to move the point of diversion approximately 3,300 feet to the east - northeast of its current location. The existing water right is a certificated underground supplemental water right in good standing and the only change sought is in the location of the point of diversion. All other elements of the existing water right will remain unchanged. The State Engineer concludes that the protest issues raised are without merit and may be overruled.

### IV.

The State Engineer concludes that change Application 75531 will not conflict with existing rights and protectible interests in existing domestic wells, and will not threaten to prove detrimental to the public interest.

### V.

The State Engineer concludes that the water sought for change is in good standing, is not subject to forfeiture or abandonment, and the filing of a change application on this existing water right is allowed by Nevada water law.<sup>9</sup>

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<sup>7</sup> NRS Chapters 533 and 534.

<sup>8</sup> NRS § 533.370(2).

<sup>9</sup> NRS § 533.040(2).

**RULING**

The protest to Application 75531 is hereby overruled and Application 75531 is approved  
subject to:

1. Existing rights; and
2. Payment of the statutory permit fee.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 4th day of  
May, 2012.