

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

IN THE MATTER OF APPLICATIONS 71060,)
71061, 71062 AND 71063 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
STEPTOE VALLEY HYDROGRAPHIC BASIN)
(179), WHITE PINE COUNTY, NEVADA.)

AMENDED RULING

#6179

GENERAL

I.

Application 71060 was filed on April 16, 2004, by Blue Diamond Oil Corp. to appropriate 0.15 cubic feet per second (cfs) of water from an underground source within the Steptoe Valley Hydrographic Basin. The proposed manner of use is quasi-municipal from January 1 to December 31 of each year, to serve three residences. The proposed place of use is described as being located within portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T.16N., 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 35.¹

II.

Application 71061 was filed on April 16, 2004, by Blue Diamond Oil Corp., and later assigned to Joseph and Delores Garcia and Juan and Tanya Romero, to appropriate 0.1 cfs of water from an underground source within the Steptoe Valley Hydrographic Basin. The proposed manner of use is quasi-municipal from January 1 to December 31 of each year, to serve two residences. The proposed place of use is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T.16N., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 35.²

III.

Application 71062 was filed on April 16, 2004, by Blue Diamond Oil Corp., and later assigned to William R. and Sandra Combs and Michael W. Greenwell, to

¹ File No. 71060, official records in the Office of the State Engineer.

² File No. 71061, official records in the Office of the State Engineer.

appropriate 0.1 cfs of water from an underground source. The proposed manner of use is quasi-municipal from January 1 to December 31 of each year to serve two residences. The proposed place of use is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T.16N., R.63E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 35.³

IV.

Application 71063 was filed on April 16, 2004, by Blue Diamond Oil Corp., and later assigned to Grant Hoggan and Steven R. and Barbara J. Groben, to appropriate 0.1 cfs of water from an underground source. The proposed manner of use is quasi-municipal from January 1 to December 31 of each year to serve two residences. The proposed place of use is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T.16N., R.63E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 35.⁴

V.

Applications 71060, 71061, 71062 and 71063 were timely protested by the City of Ely on the following grounds:

Steptoe Basin is over appropriated. The use conflicts with the City of Ely's existing rights. The use will be detrimental to the City of Ely by limiting growth of the City's water system; therefore, detrimental to the Public interest.

FINDINGS OF FACT

I.

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 an application to appropriate the public waters of the state of Nevada. The State Engineer finds that sufficient evidence is available in the

³ File No. 71062, official records in the Office of the State Engineer.

⁴ File No. 71063, official records in the Office of the State Engineer.

Office of the State Engineer to evaluate the merits of Applications 71060 through 71063 and the protest; therefore, a hearing on this matter is not necessary.

II.

On July 21, 2010, a field investigation of Applications 71060 through 71063 revealed that eight of the nine lots described in the place of use have single family dwellings and appeared to be currently occupied. The remaining lot, being White Pine County Assessor's Parcel No. 010-83-02, appears to be a commercial business. Four wells have been constructed. Three are currently providing water to two residences each and one well serves two residences and one business. The wells were originally drilled for domestic purposes, but Nevada water law only allows for one domestic unit on a domestic well. The State Engineer finds that Applications 71060 through 71063 were filed to appropriate water for quasi-municipal purposes for each well location.

III.

The protest claims that the committed underground resource of Steptoe Valley exceeds its estimated perennial yield. The State Engineer finds that Steptoe Valley currently shows 106,315.40 acre-feet annually (afa) in unadjusted active underground water rights.⁵ The perennial yield of Steptoe Valley Hydrographic Basin is estimated at 70,000 afa.⁶ A further analysis of the committed resources show that 25,069.05 afa of water committed to industrial use of which 25,000 afa is held by White Pine County for power generation. A power plant has yet to be constructed at the proposed sites. Groundwater permitted for mining related activities accounts for an additional 31,094.39 afa. The State Engineer considers mining to be a temporary use of water, which would cease when mining operations cease. Groundwater for irrigation purposes totals 38,434.45 afa. Considering the consumptive use factor of 2.9 acre-feet per acre, the actual annual quantity of water used for irrigation is approximately 27,865 afa.

⁵ Hydrographic Basin Summary by Manner of Use, official records in the Office of the State Engineer, August 11, 2011.

⁶ Thomas E. Eakin, Jerry L. Hughes and Donald O. Moore, *Water - Resources Appraisal of Steptoe Valley, White Pine and Elko Counties, Nevada*, Water Resources - Reconnaissance Series Report 42, (Department of Conservation and Natural Resources, Division of Water Resources and United States Geological Survey), June 1967.

Applications 71060 through 71063 request approximately 18 afa of groundwater in total. By comparing the estimated perennial yield to the committed groundwater resource, as adjusted for temporary and consumptive uses, the State Engineer finds that Steptoe Valley has groundwater available for appropriation in the relatively small quantities requested in Applications 71060 through 71063.

IV.

The protest asserts that Applications 71060, 71061, 71062 and 71063 would conflict with the City of Ely's existing water rights. The State Engineer finds that the place of use of Applications 71060, 71061, 71062 and 71063 is outside of the place of use of the City of Ely's municipal water rights and they do not conflict with the City of Ely's water rights. The State Engineer finds the place of use cannot be served water by the City of Ely, at this time.

V.

The State Engineer finds that the maximum duty of water requested in Applications 71060, 71061, 71062 and 71063 is 18.138 afa. The State Engineer finds that this amount would be similar to domestic well use on each lot.

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 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 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.

⁷ NRS Chapter 533 and 534.

⁸ NRS § 533.370(2).

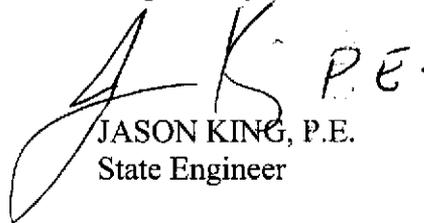
III.

The State Engineer concludes that water is available for appropriation and that Applications 71060, 71061, 71062 and 71063 will not conflict with existing rights, protectable interests in domestic wells, and will not threaten to prove detrimental to the public interest.

RULING

The protest to Applications 71060, 71061, 71062 and 71063 is hereby overruled and the applications are granted subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 16th day of
May, 2012.

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II.

Application 71061 was filed on April 16, 2004, by Blue Diamond Oil Corp., and later assigned to Joseph and Delores Garcia and Juan and Tanya Romero, to appropriate 0.1 cfs of water from an underground source within the Steptoe Valley Hydrographic Basin. The proposed manner of use is quasi-municipal from January 1 to December 31 of each year, to serve two residences. The proposed place of use is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T.16N., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 35.²

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⁷ NRS Chapter 533 and 534.

⁸ NRS § 533.370(5).

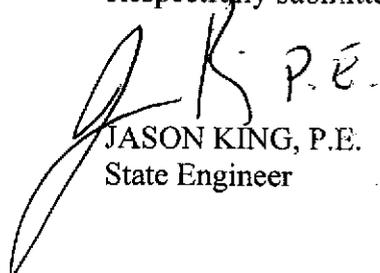
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Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 7th day of
May, 2012.