

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

IN THE MATTER OF APPLICATIONS 68667,)
69720, 71382 AND 73967 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN)
THE DODGE FLAT HYDROGRAPHIC)
BASIN (82), WASHOE COUNTY, NEVADA.)

RULING

#6206

GENERAL

I.

Application 68667 was filed on April 1, 2002, by Kim McCreary, later assigned to The Fort Churchill Corporation to appropriate 1.0 cubic foot per second (cfs) of underground water for irrigation purposes. The proposed place of use is described as being located within the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24, T.21N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 24.¹

II.

Application 69720 was filed on March 10, 2003, by Sweetwater Properties, LLC to appropriate 3.342 cfs of underground water for quasi-municipal purposes. The proposed place of use is described as being within the Service District Boundary of Fernley Town Utilities. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T.20N., R.24E., M.D.B.&M.²

III.

Application 71382 was filed on June 30, 2004, by the City of Fernley to appropriate 5.57 cfs of underground water for quasi-municipal purposes. The proposed place of use is described as being located within Townships 19 North, Ranges 23, 24 and 25 East, Township 20 North, Ranges 24, 25 and 26 East, Township 21 North, Ranges 25 and 26 East, and Township 22 North, Range 26 East. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, T.20N., R.24E., M.D.B.&M.³

¹ File No. 68667, official records in the Office of the State Engineer.

² File No. 69720, official records in the Office of the State Engineer.

³ File No. 71382, official records in the Office of the State Engineer.

IV.

Application 73967 was filed on March 6, 2006, by Robyn DeJonker to appropriate 0.5 cfs, not to exceed 320 acre-feet annually (afa), of underground water for irrigation and domestic purposes. The proposed place of use is described as being located within the N½ SW¼ of Section 24, T.21N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of said Section 24.⁴

V.

Applications 68667 and 69720 were timely protested by Washoe County on the grounds that there is no unappropriated water at the source and the proposed use may be detrimental to the public interest.^{1,2}

VI.

Application 71382 was timely protested by the U.S. Bureau of Indian Affairs and Applications 71382 and 73967 were timely protested by Washoe County, Churchill County, and the Pyramid Lake Paiute Tribe (Tribe) on various grounds not to be considered in this ruling with the exception of the groundwater basin is fully appropriated.^{3,4}

FINDINGS OF FACT

I.

Nevada Revised Statute § 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 Applications 68667, 69720, 71382 and 73967, 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 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

⁴ File No. 73967, official records in the Office of the State Engineer.

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.⁵

III.

On September 27, 2001, the Nevada State Engineer issued Ruling No. 5079, in regard to Applications 66555, 66556 and 66557, all within the Dodge Flat Hydrographic Basin. Contained within this ruling is a determination of a perennial yield of 2,100 acre-feet annually for the Dodge Flat Hydrographic Basin. State Engineer's Ruling No. 5079 appropriated the remaining groundwater of the Dodge Flat Hydrographic Basin up to the perennial yield of 2,100 afa. A review of records on file in the Office of the State Engineer show that the Dodge Flat Hydrographic Basin is fully appropriated under existing groundwater permits and certificates.⁶

The State Engineer finds that the Dodge Flat Hydrographic Basin is fully appropriated under existing water rights and no additional water is available in the quantities requested under Applications 68667, 69720, 71382 and 73967.

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 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.

⁵ Office of the State Engineer, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p. 13, Oct. 1971.

⁶ Nevada Division of Water Resources, Hydrographic Basin Summary, September 14, 2012, official records in the Office of the State Engineer.

⁷ NRS Chapters 533 and 534.

⁸ NRS § 533.370(2).

III.

The State Engineer concludes that the Dodge Flat Hydrographic Basin is fully appropriated under existing water rights and there is no unappropriated water available at the source. The State Engineer concludes that approval of the subject applications would result in the permanent withdrawal of ground water in excess of the perennial yield of the Dodge Flat Hydrographic Basin, and therefore would adversely affect existing rights and would threaten to prove detrimental to the public interest.

RULING

The protests to Applications 68667, 69720, 71382 and 73967 are upheld in part and the applications are hereby denied on the grounds that there is no unappropriated water at the source. No ruling is made on the merits of the remaining protest issues.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 5th day of
December, 2012.