

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

IN THE MATTER OF APPLICATIONS 74816, )  
74817 AND 74818 FILED TO CHANGE THE )  
POINT OF DIVERSION, THE PLACE OF USE )  
AND THE MANNER OF USE OF THE )  
WATERS OF AN UNDERGROUND SOURCE )  
PREVIOUSLY APPROPRIATED UNDER )  
PERMITS 70231 (PORTION), 65235 AND )  
65236, RESPECTIVELY, WITHIN THE )  
CRATER FLAT HYDROGRAPHIC BASIN )  
(229), NYE COUNTY, NEVADA. )

**RULING**  
**#6213**

**GENERAL**

**I.**

Application 74816 was filed on September 25, 2006, by Allied Building Materials, Inc., to change the point of diversion, place of use and the manner of use of 0.0646 cubic feet per second (cfs), not to exceed 15.5 acre-feet annually (afa), that being a portion of the underground water previously appropriated under Permit 70231. The proposed manner and place of use is for commercial block manufacturing within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 36, T.14S., R.48E., 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 36.

The existing point of diversion is located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, T.16S., R.48E., M.D.B.&M. The existing manner and place of use is for commercial nursery and domestic purposes within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 7.<sup>1</sup>

**II.**

Application 74817 was filed on September 25, 2006, by Allied Building Materials, Inc., to change the point of diversion, place of use and the manner of use of 0.0389 cfs, not to exceed 10.0 afa, of the underground water previously appropriated under Permit 65235. The proposed manner and place of use is for mining and milling purposes within the SE $\frac{1}{4}$  of Section 36 T.14S., R.48E.

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<sup>1</sup> File No. 74816, official records in the Office of the State Engineer.

and the N $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 1, T.15S., R.48E., 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 Section 36, T.14S., R.48E., M.D.B.&M.

The existing point of diversion is located within the SE $\frac{1}{4}$  of Government Lot 8, Section 35, T.16S., R.48E., M.D.B.&M. The existing manner and place of use is for the irrigation and domestic use on 50 acres of land located in the W $\frac{1}{2}$  of Government Lot 1, and the W $\frac{1}{2}$  and SE $\frac{1}{4}$  of Government Lot 8, all within Section 35, T.16S., R.48E., M.D.B.&M.<sup>2</sup>

### III.

Application 74818 was filed on September 25, 2006, by Allied Building Materials, Inc., to change the point of diversion, place of use and the manner of use of 0.039 cfs, not to exceed 10.0 afa, of the underground water previously appropriated under Permit 65236. The proposed manner and place of use is for mining and milling purposes within 160 acres of land within the SE $\frac{1}{4}$  of Section 35, T.14S., R.48E., and 80.0 acres within the N $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 1, T.15S., R.48E., 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 Section 36, T.14S., R.48E., M.D.B.&M.

The existing point of diversion is located within the SE $\frac{1}{4}$  of Government Lot 8, in Section 35, T.16S., R.48E., M.D.B.&M. The existing manner and place of use is for the irrigation and domestic use on 50 acres of land located in the W $\frac{1}{2}$  of Government Lot 1, and the W $\frac{1}{2}$  and SE $\frac{1}{4}$  of Government Lot 8, all within Section 35, T.16S., R.48E., M.D.B.&M.<sup>3</sup>

### FINDINGS OF FACT

#### I.

For management and water planning purposes, the United States Geological Survey and the Nevada Division of Water Resources have divided the State of Nevada into 256 groundwater basins and sub-basins each of which is identified by a name and number. The boundaries of each groundwater basin, in addition to its status, are depicted upon the 1:750 000 Designated Groundwater Basin Map created by the Office of the State Engineer in September 2003. To

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<sup>2</sup> File No. 74817, official records in the Office of the State Engineer.

<sup>3</sup> File No. 74818, official records in the Office of the State Engineer.

maintain its accuracy, the groundwater basin map is revised on occasion to reflect additional groundwater basin designations or the addition of new preferred uses.<sup>4</sup>

The importance of this map is demonstrated early in the water right application process, when the information contained within the application is used to plot the location of the proposed point of diversion on the designated groundwater basin map. The host groundwater basin is then identified and the groundwater basin name and corresponding number are placed on the inside cover of the application file. The groundwater basin determination is a simple, but important step, since the State Engineer's regulations governing the appropriation of water often differs from one groundwater basin to another.

It was determined through this process, that the proposed points of diversion described by each of the subject applications are located within the southern portion of the Crater Flat Hydrographic Basin. It was also found that the existing points of diversion requested for change are, without exception, contained within the boundaries of the Amargosa Desert Hydrographic Basin (230). Subsequently, the Applicant's agent was advised by letter dated October 24, 2006, that "An application to change may not change the source of water, and each groundwater basin in Nevada is considered a separate source. Therefore, the basin for the proposed Point of Diversion must be the same as the basin for the existing Point of Diversion for the base right." The agent was then instructed to amend the location of the proposed points of diversion to well sites within the Amargosa Desert Hydrographic Basin (230) or withdraw the applications on or before December 23, 2006.<sup>1</sup> Amended applications were never received, and the State Engineer finds that without the recommended changes Applications 74816, 74817 and 74818 cannot be considered for approval.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

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<sup>4</sup> Designated Groundwater Basins of Nevada 1:750 000 map, September 2003, official records in the Office of the State Engineer.

<sup>5</sup> NRS Chapters 533 and 534.

**II.**

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>6</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 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.

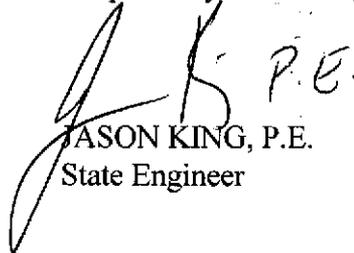
**III.**

Applications 74816, 74817 and 74818 were upon their initial review found to be defective, in that they proposed a transfer of points of diversion from one groundwater basin to another. Subsequently, the applications were returned to Allied Building Materials, Inc., to make the necessary changes. Having failed to do so, the State Engineer concludes the applications cannot be considered for approval and to issue permits under the applications would threaten to prove detrimental to the public interest.

**RULING**

Applications 74816, 74817 and 74818 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 14th day of  
February, 2013.

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<sup>6</sup> NRS § 533.370(2).