

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

IN THE MATTER OF APPLICATION 82610 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
CLOVER VALLEY HYDROGRAPHIC BASIN)
(177), LOCATED WITHIN ELKO COUNTY,)
NEVADA.)

RULING

#6236

GENERAL

I.

Application 82610 was filed on March 12, 2013, by Tommy, LLC to appropriate 2.0 cubic feet per second (cfs) of water from an underground source in the Clover Valley Hydrographic Basin for irrigation and domestic purposes. The proposed point of diversion is described as being located within Lot 4 of Section 18, T.33N., R.62E., M.D.B.&M. The proposed place of use is described as 128 acres being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Lot 3 and Lot 4 of said Section 18. The description of the project and the remarks state that this application is for water to be used entirely to supplement and to be commingled with the surface water of Warm Springs under Permit 28104, Certificate 10128.¹

II.

Application 82610 was timely protested by Martha P. Hoots on grounds as summarized below:¹

1. Granting the application will over appropriate the Clover Valley Hydrographic Basin.
2. State Engineer's Ruling No. 6156 previously rejected a water application in the Clover Valley Hydrographic Basin as a result of a high concentration of existing water rights.
3. Granting Application 82610 to appropriate additional waters of Clover Valley will perpetuate the current drought conditions in Clover Valley; prove detrimental to the surface waters, underground aquifers, existing uses and rights of Clover Valley and adjacent water basins; and will adversely impact and conflict with the existing rights of the Protestant.

¹ File No. 82610, official records in the Office of the State Engineer.

III.

An answer to the protest was timely filed by the Applicant addressing the grounds of the protest as summarized below:¹

1. Only 128 acres are being sought under this application, which will result in a maximum duty of 512 afa and not 1447.93 afa. The entire proposed place of use is supplemental to the waters of Warm Springs under Permit 28104, Certificate 10128, which would further reduce the groundwater demand. Many of the groundwater rights in the basin are supplemental to surface water, which must be accounted for in considering the demand on the basin.
2. Prior denials in the Clover Valley basin were the result of proximity to a high concentration of wells by State Engineer's Ruling Nos. 6156 and 3215. Although many applications were denied by Ruling No. 3215, Application 44443 was approved because it was not in the area of concentrated wells. The point of diversion of Application 82610 is not near any of the Protestant's wells and even further away from the concentrated wells described in Ruling No. 3215.
3. The assertions that approving Application 82610 to appropriate additional waters of Clover Valley will perpetuate the current drought conditions in Clover Valley; prove detrimental to the surface waters, underground aquifers, existing uses and rights of Clover Valley and adjacent water basins; and will adversely impact and conflict with the existing rights of the Protestant is baseless and unsupported by evidence.

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 the State of Nevada. The State Engineer finds that in the case of protested Application 82610, 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.

Application 82610 was protested in part on grounds that granting the application will over appropriate the Clover Valley Hydrographic Basin and prove detrimental to the surface waters and underground aquifers of Clover Valley.

Under the provisions found under NRS § 533.370(2), before an application that requests a new appropriation of underground water can be considered for approval it must be determined, among other things, that there is unappropriated water available at the targeted source. The answer

to the question of what amount of underground water is available for additional appropriation from the Clover Valley Hydrographic Basin can be found in an analysis of the basin's recharge-discharge relationship. The Office of the State Engineer estimates that the perennial yield of the Clover Valley Hydrographic Basin is 19,000 acre-feet annually (afa).² The committed groundwater appropriations in the basin amount to 19,633 afa. Of the committed and pending appropriations, 19,212 afa are for irrigation use for the irrigation of approximately 4,803 acres.³ In general, the permitted duty for irrigation in Clover Valley is 4.0 acre-feet per acre. The actual amount of water needed to grow crops like alfalfa within Clover Valley is the net irrigation water requirement or consumptive use. The consumptive use in Clover Valley Hydrographic Basin is 2.5 acre-feet per acre.⁴ Multiplying 2.5 acre-feet per acre times 4,803 acres brings the consumptive use of the committed groundwater appropriation for irrigation to 12,007 afa. Adding commercial, domestic, mining and milling, stockwater and wildlife uses brings the total consumptive use in the Clover Valley Hydrographic Basin to 12,428 afa. Approval of Application 82610 for the typical duty of 4.0 acre-feet per acre for the entire 128 acres requested will result in a duty of 512 acre-feet annually. However, as just discussed, the consumptive use portion would be 320 afa. Adding this quantity to the existing consumptive use value of 12,428 afa equals 12,748, which is less than the perennial yield of 19,000 afa.

Many of the underground water rights in the Clover Valley Hydrographic Basin are supplemental to surface water rights.^{5, 6} When groundwater from a specific well, or point of diversion, is used as the sole source for a place of use, it is commonly referred to as a "stand-

² Thomas Eakin, et al., *Contributions to the Hydrology of Eastern Nevada: Nevada State Engineer, Water Resources Bulletin No. 12*, (Department of Conservation and Natural Resources, Division of Water Resources and United States Geological Survey), pp. 107-110, 1951.

³ Nevada Division of Water Resources' Water Rights Database, Hydrographic Basin Summary, Clover Valley Hydrographic Basin (177), August 23, 2013, official records in the Office of the State Engineer.

⁴ *Evapotranspiration and Net Irrigation Water Requirements for Nevada*, Huntington and Allen, 2010, available online at http://water.nv.gov/mapping/et/et_general.cfm.

⁵ Water Rights Township Plats, Township 33 North, Range 61 and 62 East; Township 34 North, Range 62 and 63 East; Township 35 North, Range 61 and 62 East; and Township 36 North, Range 61 and 62 East M.D.B.&M., official records in the Office of the State Engineer.

⁶ Nevada Division of Water Resources' Water Rights Database, August 23, 2013, official records in the Office of the State Engineer.

alone” right. When used in combination with surface water (and in some instances with groundwater from another point of diversion), the right is considered “supplemental”; meaning the groundwater right supplements, or is supplemented by, water from another source used on the same place of use. When a groundwater right is issued as supplemental to a surface water source, it is expected that the groundwater permit will not be utilized until the surface water becomes unavailable, and then used only to make up the difference between the surface water available and the amount allowed by the water rights. Thus, it is expected that a supplemental groundwater right will not generally be used to its full allocation.

The place of use of Application 82610 lies entirely within the place of use of Permit 28104, Certificate 10128, and the remarks and project description for the Application explicitly state that the appropriation sought under the application is for supplemental purposes.^{1,7}

The State Engineer finds that after considering the consumptive use for irrigation and the supplemental nature of many of the existing irrigation water rights and the supplemental nature of Application 82610, there is unappropriated water available in the Clover Valley Hydrographic Basin. The State Engineer finds that the new appropriation contemplated under Application 82610 will not be detrimental to the surface waters or the groundwater aquifers of the Clover Valley Hydrographic Basin.

III.

Application 82610 was protested on the grounds that State Engineer’s Ruling No. 6156 previously denied a water right application in the Clover Valley Hydrographic Basin as a result of a high concentration of existing water rights, that granting Application 82610 will adversely impact and conflict with the existing rights of the Protestant and that granting Application 82610 would prove detrimental to existing uses and rights of Clover Valley and adjacent water basins. In its answer to protest, the Applicant concurs that in that ruling the State Engineer did deny an application for that reason, but that it does not apply to this application.¹ After an examination of the records of the Office of the State Engineer, the State Engineer has determined that there are no water right permits, proofs or claims filed by the protestant that are within eight miles of the

⁷ File No. 28104, official records in the Office of the State Engineer.

proposed point of diversion of Application 82610.⁸ State Engineer's Ruling No. 3215 clearly defines the area of concentrated pumpage within the Clover Valley Hydrographic Basin as being within T.34N., R.62E. and T.35N., R.62E.⁹ The proposed point of diversion is described as being located within Lot 4 of Section 18, T.33N., R.62E., M.D.B.&M., which is about 6 to 8 miles south and outside of the area of concentrated pumpage defined by State Engineer's Ruling No. 3215.^{10, 11} The State Engineer finds that the point of diversion of Application 82610 is outside the area of concentrated wells and will not conflict with the Protestant's or others' existing water rights.

IV.

Application 82610 was protested in part on grounds that granting Application 82610 to appropriate additional waters of Clover Valley will perpetuate the current drought conditions in Clover Valley.

There is no evidence, when unappropriated water is available, that a new appropriation of groundwater that is supplemental to a surface water source will perpetuate a drought. A supplemental groundwater right provides a valuable contingency for the irrigator if the surface water source that it supplements becomes unavailable due to drought. The State Engineer finds that granting Application 82610 will not perpetuate the current drought conditions in Clover Valley.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹²

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹³

⁸ Water Rights Township Plats, Township 33 North, Range 61 and 62 East, Township 34 and 35 North, Range 62 East M.D.B.&M., official records in the Office of the State Engineer.

⁹ State Engineer's Ruling No. 3215, dated July 25, 1985, official records in the Office of the State Engineer.

¹⁰ See paper plat filed in File No. 82610, official records in the Office of the State Engineer.

¹¹ Water Rights Township Plats 34 and 35 North, Range 62 East M.D.B.&M., official records in the Office of the State Engineer.

¹² NRS Chapters 533 and 534.

¹³ NRS § 533.370(2).

- 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.

The State Engineer concludes that there is unappropriated water available within the Clover Valley Hydrographic Basin.

IV.

The Protestant has no water permits within eight miles of the proposed point of diversion of Application 82610, and the proposed point of diversion of Application 82610 is outside of the area of concentrated pumpage defined by Ruling Nos. 3215 and 6156. Therefore, the State Engineer concludes that the proposed use or change will not conflict with existing rights or threaten to prove detrimental to the public interest.

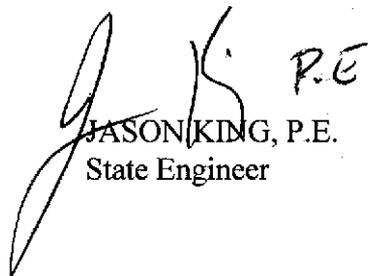
V.

The State Engineer concludes that approval of Application 82610 will not perpetuate drought conditions; therefore, the proposed use or change will not threaten to prove detrimental to the public interest.

RULING

The protest is overruled and Application 82610 is hereby approved for irrigation and domestic purposes subject to existing rights and the payment of the statutory permit fees.

Respectfully submitted,

 P.E.
JASON KING, P.E.
State Engineer

Dated this 13th day of
September, 2013.