

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

IN THE MATTER OF APPLICATIONS)
50195, 50196, 50197 AND 50198 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE AND)
APPLICATIONS 53406, 53408, 53421 AND)
53434 FILED TO CHANGE THE MANNER)
AND PLACE OF USE OF APPLICATIONS)
50195, 50196, 50197 AND 50198,)
RESPECTIVELY, WITHIN THE HONEY)
LAKE VALLEY HYDROGRAPHIC BASIN)
(97), WASHOE COUNTY, NEVADA.)

RULING

#6265

GENERAL

I.

Application 50195 was filed on October 2, 1986, by Washoe County, to appropriate 5.0 cubic feet per second (cfs) of water from an underground source for quasi-municipal purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T.26N., R.18E., M.D.B.&M. The proposed place of use is described as being within Washoe County as described in NRS § 243.340, *et seq.*¹

II.

Application 50196 was filed on October 2, 1986, by Washoe County to appropriate 5.0 cfs of water from an underground source for quasi-municipal purposes. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T.26N., R.18E., M.D.B.&M. The proposed place of use is described as being within Washoe County as described in NRS § 243.340, *et seq.*²

III.

Application 50197 was filed on October 2, 1986, by Washoe County to appropriate 5.0 cfs of water from an underground source for quasi-municipal purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T.26N., R.19E.,

¹ File No. 50195, official records in the Office of the State Engineer.

² File No. 50196, official records in the Office of the State Engineer.

M.D.B.&M. The proposed place of use is described as being within Washoe County as described in NRS § 243.340, *et seq.*³

IV.

Application 50198 was filed on October 2, 1986, by Washoe County to appropriate 5.0 cfs of water from an underground source for quasi-municipal purposes. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 22, T.26N., R.19E., M.D.B.&M. The proposed place of use is described as being within Washoe County as described in NRS § 243.340, *et seq.*⁴

V.

Applications 50195, 50196, 50197 and 50198 were timely protested by Fish Springs Ranch, Ltd.; John J. Casey, Holland Livestock Ranch, a partnership; Bright Holland Co., a Nevada corporation, Nemeroff Holland Co., a Nevada corporation; Maremont Holland Co., a Nevada corporation; and County of Lassen, California, on grounds not to be considered in this ruling.^{1, 2, 3, 4}

VI.

Application 50198 was also timely protested by Allen P. Farias on grounds not to be considered in this ruling.⁴

VII.

Application 53406 was filed on June 23, 1989, by Washoe County to change the place and manner of use of 5.0 cfs, not to exceed 3,619.8 acre-feet annually (afa), of water from an underground source previously applied for under Application 50195. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 33, T.26N., R.18E., M.D.B.&M. The proposed manner of use is for municipal purposes described as being located within:

T.15N., R.18E.: that portion of Section 1 lying outside of the natural drainage basin of Lake Tahoe.

T.15N., R.19E.: Section 4 excluding the SE¼; Sections 5 and 8; that portion of Sections 6, 7, and the N½ of the N½ of Section 18 lying outside of the natural drainage basin of Lake Tahoe.

³ File No. 50197, official records in the Office of the State Engineer.

⁴ File No. 50198, official records in the Office of the State Engineer.

T.16N., R.18E.: that portion of Sections 1, 5, 6, 12, 13, 24, 25 and 36 lying outside of the natural drainage basin of Lake Tahoe, and excluding any portion of the $W\frac{1}{2}$ of the $W\frac{1}{2}$ and the $W\frac{1}{2}$ of the $E\frac{1}{2}$ of the $W\frac{1}{2}$ of Section 6.

T.16N., R.19E.: all, excluding those portions of Sections 6, 7, 18, 19 and 30 lying within the natural drainage basin of Lake Tahoe, and excluding the $S\frac{1}{2}$ of Section 35 and the $NE\frac{1}{4}$ and the $SE\frac{1}{4}$ and the $SW\frac{1}{4}$ of Section 36.

T.16N., R.20E.: Sections 2 through 11 inclusive; Sections 15 through 20 inclusive; Section 30; the $N\frac{1}{2}$ of Section 1; portions of the $SW\frac{1}{4}$ of the $NW\frac{1}{4}$ and the $NW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 14.

T.17N., R.18E.: all excluding the $W\frac{1}{2}$ of the $W\frac{1}{2}$ and the $W\frac{1}{2}$ of the $E\frac{1}{2}$ of the $W\frac{1}{2}$ of Sections 6, 7, 18, 19, 30 and 31; and excluding those portions of Sections 22, 23, 26, 27, 32, 33, 34, 35 and 36 lying within the natural drainage basin of Lake Tahoe.

T.17N., R.19E.: all, excluding that portion of Section 31 lying within the natural drainage basin of Lake Tahoe.

T.17N., R.20E.: all.

T.17N., R.21E.: the $W\frac{1}{2}$ of Section 7; Section 18.

T.18N., R.18E.: all, excluding the $W\frac{1}{2}$ of Sections 6, 7, 18, 19, 30 and 31.

T.18N., R.19E.: all.

T.18N., R.20E.: all, excluding Section 1 and the $E\frac{1}{2}$ of Section 36.

T.18N., R.21E.: Sections 7, 18 and 19.

T.19N., R.18E.: all, excluding the $W\frac{1}{2}$ of Sections 6, 7, 18, 19, 30 and 31.

T.19N., R.19E.: all.

T.19N., R.20E.: all, excluding Sections 24, 25 and 36; and the portion of Section 13 south of the Truckee River.

T.19N., R.21E.: Sections 3 through 9 inclusive; and those portions of Sections 1, 2, 10, 11, 15, 16, 17 and 18 lying north of the Truckee River.

T.19N., R.22E.: that portion of Section 6 lying north of the Truckee River.

T.20N., R.18E.: all, excluding the $W\frac{1}{2}$ and the $W\frac{1}{2}$ of the $W\frac{1}{2}$ of the $E\frac{1}{2}$ of Sections 6, 7, 18, 19, 30 and 31.

T.20N., R.19-21E.: all.

T.20N., R.22E.: all, excluding Section 36 and those portions of Sections 24, 25, 26, 28, 29, 31, 32, 33, 34 and 35 lying south and/or east of the Truckee River.

T.20N., R.23E.: Sections 1 through 12 inclusive; Sections 15, 16, 17 and 18; and those portions of Sections 13, 14, 19, 20, 21, 22 and 23 lying north of the Truckee River.

T.20N., R.24E.: Sections 1 through 7 inclusive; those portions of Sections 8, 9, 17 and 18 lying north of the Truckee River.

T.20N., R.25E.: Section 6; the NW $\frac{1}{4}$ and portions of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$, NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 5.

T.21N., R.18E.: all, excluding the W $\frac{1}{2}$ and the W $\frac{1}{2}$ of the E $\frac{1}{2}$ of Sections 6, 7, 18, 19, 30 and 31.

T.21N., R.19-24E.: all.

T.21N., R.25E.: Sections 4, 5, 6, 7, 8, 9, 17, 18, 19, 30 and 31; portions of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$, the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 3; a portion of the W $\frac{1}{2}$ of the W $\frac{1}{2}$ of Section 10; a portion of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 15; the NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and a portion of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and a portion of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 16; a portion of the N $\frac{1}{2}$ of the N $\frac{1}{2}$ and the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ and a portion of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 20; and the W $\frac{1}{2}$ and the W $\frac{1}{2}$ of the E $\frac{1}{2}$ of Sections 29 and 32.

T.22N., R.18E.: those portions of Sections 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35 and 36 lying within the natural drainage basin of Cold Spring Valley and Lemmon Valley.

T.22N., R.19E.: those portions of Sections 7, 8, 16, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33 and 34 lying within the natural drainage basin of Lemmon Valley.⁵

VIII.

Application 53408 was filed on June 23, 1989, by Washoe County to change the place and manner of use of 5.0 cfs, not to exceed 3,619.8 afa, of water from an underground source previously applied for under Application 50196. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T.26N., R.18E., M.D.B.&M. The proposed manner of use is for municipal purposes described as being located within the same place of use as that on Application 53406.⁶

⁵ File No. 53406, official records in the Office of the State Engineer.

⁶ File No. 53408, official records in the Office of the State Engineer.

IX.

Application 53421 was filed on June 23, 1989, by Washoe County to change the place and manner of use of 5.0 cfs, not to exceed 3,619.8 afa, of water from an underground source previously applied for under Application 50197. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 31, T.26N., R.19E., M.D.B.&M. The proposed manner of use is for municipal purposes described as being located within the same place of use as that on Application 53406.⁷

X.

Application 53434 was filed on June 23, 1989, by Washoe County to change the place and manner of use of 5.0 cfs, not to exceed 3,619.8 afa, of water from an underground source previously applied for under Application 50198. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 22, T.26N., R.19E., M.D.B.&M. The proposed manner of use is for municipal purposes described as being located within the same place of use as that on Application 53406.⁸

XI.

Applications 53406, 53408, 53421 and 53434 were timely protested by the Sierra Army Depot; County of Lassen, California; the Board of Supervisors of the County of Modoc, California; California Department of Fish and Game; Cities of Reno and Sparks; and the Pyramid Lake Paiute Tribe of Indians on grounds not to be considered in this ruling.^{5, 6, 7, 8}

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 sufficient evidence is available in the records of the Office of the State Engineer to evaluate the merits of Applications 50195, 50196, 50197, 50198, 53406, 53408, 53421 and 53434 and their associated protests and a hearing is not necessary.

⁷ File No. 53421, official records in the Office of the State Engineer.

⁸ File No. 53434, official records in the Office of the State Engineer.

II.

Nevada Revised Statute § 533.370(2) provides that the State Engineer must reject an application where there is no unappropriated water in the proposed source of supply. In determining the amount of groundwater available for appropriation in a given hydrographic basin (basin), the State Engineer relies on available hydrologic studies to provide relevant data to determine the perennial yield of a basin. The perennial yield is a guideline that is used in Nevada to manage groundwater development, and may be defined as the maximum amount of groundwater that can be withdrawn each year over the long term without depleting the groundwater reservoir. Perennial yield sets an upper limit on the amount of groundwater that can be developed in a groundwater basin and is ultimately limited to the maximum amount of natural discharge that can be withdrawn for beneficial use. Since perennial yield is determined by the natural hydrologic conditions, limiting groundwater development to a basin's perennial yield ensures sustainable development of the groundwater resource. Thus, perennial yield cannot be more than the natural recharge to a groundwater basin and in some cases is less.⁹

The perennial yield of the Honey Lake Valley Hydrographic Basin is currently estimated at 13,000 afa.¹⁰ A review of records on file in the Office of the State Engineer show total committed groundwater resources in Honey Lake Valley at 14,808.35 afa.¹¹ The State Engineer finds that there is no additional groundwater available for appropriation in the quantities necessary to satisfy Applications 50195, 50196, 50197, and 50198.

III.

If Applications 50195, 50196, 50197 and 50198 are denied, they can no longer be used to support the transfers proposed under change Applications 53406, 53408, 53421 and 53434. The State Engineer finds that change Applications 53406, 53408, 53421 and 53434 cannot be considered for approval, if the underlying base rights are not approved.

⁹ Office of the State Engineer, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p. 13, Oct. 1971.

¹⁰ State Engineer's Ruling No. 3787, p. 174, official records in the Office of the State Engineer.

¹¹ Nevada Division of Water Resources' Water Rights Database, Hydrographic Basin Summary, Honey Lake Valley Hydrographic Basin (97), July 26, 2013, 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.¹²

II.

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

- 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 committed groundwater resources of the Honey Lake Valley Hydrographic Basin currently exceed the groundwater basin's estimated perennial yield.¹⁰ The State Engineer concludes that the approval of the subject applications would result in the withdrawal of groundwater in gross excess of the perennial yield of the Honey Lake Valley Hydrographic Basin and therefore, would adversely affect existing rights and would threaten to prove detrimental to the public interest.

IV.

A water right application may be filed to change the point of diversion, place or manner of use of water already appropriated.¹⁴ Water already appropriated, in reference to a change application, refers to water represented by a water right filing that is considered to be in good standing. Once Applications 50195, 50196, 50197, and 50198 are denied, there are no longer valid water rights to be changed by Applications 53406, 53408, 53421, and 53434. The State Engineer concludes it would threaten to prove detrimental to the public interest to grant change applications when the applications that supported the changes have been denied.

¹² NRS Chapters 533 and 534.

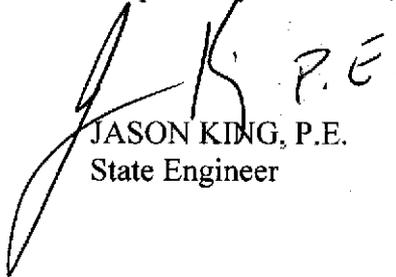
¹³ NRS § 533.370(2).

¹⁴ NRS § 533.325.

RULING

Applications 50195, 50196, 50197, and 50198 are hereby denied on the grounds that their approval would conflict with existing rights and would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests. Applications 53406, 53408, 53421, and 53434 are denied on the grounds that the water right filings that form the basis for their proposed changes are not in good standing and cannot be used to support the change applications, and therefore would prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 20th day of
February, 2014.