

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

IN THE MATTER OF APPLICATION 83949 FILED )  
TO APPROPRIATE THE PUBLIC WATERS OF AN )  
UNDERGROUND SOURCE WITHIN THE STEVENS )  
BASIN HYDROGRAPHIC BASIN (152), EUREKA )  
COUNTY, NEVADA. )

**RULING**  
**#6320**

**GENERAL**

**I.**

Application 83949 was filed on June 24, 2014, by Eureka County to appropriate 0.40 cubic feet per second (cfs), not to exceed 76.0 acre-feet annually (afa) of water from an underground source for municipal use. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 7, T.18N., R.53E., M.D.B.&M. The proposed place of use is described as being located within Sections 1, 2, 3, 4, 5, 8, 9, 10, 11 and 17, T.18N., R.53E., M.D.B.&M.; Sections 5 and 6, T.18N., R.54E., M.D.B.&M.; Sections 1, 2, 11, 12, 13, 24 and 25, T.19N., R.52E., M.D.B.&M.; Sections 1 through 36, T.19N., R.53E., M.D.B.&M.; Sections 1 through 23 and 27 through 34, T.19N., R.54E., M.D.B.&M.; Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36, T.20N., R.52E., M.D.B.&M.; Sections 1 through 36, T.20N., R.53E., M.D.B.&M.; Sections 1 through 36, T.20N., R.54E., M.D.B.&M.; Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 34, 35 and 36, T.21N., R.52E., M.D.B.&M.; Sections 1 through 36, T.21N., R.53E., M.D.B.&M.; Sections 1 through 36, T.21N., R.54E., M.D.B.&M.; Sections 1, 2, 3 and 4, T.21 $\frac{1}{2}$ N., R.52E., M.D.B.&M.; Sections 1, 2, 3, 4, 5 and 6, T.21 $\frac{1}{2}$ N., R.53E., M.D.B.&M.; Sections 31, 32, 33, 34, 35 and 36, T.21 $\frac{1}{2}$ N., R.54E., M.D.B.&M.; Sections 1, 12 and 13, T.22N., R.51E., M.D.B.&M.; Sections 1, 12, 13, 24 and 25, T.22N., R.51 $\frac{1}{2}$ E., M.D.B.&M.; Sections 1 through 30 and 32 through 36, T.22N., R.52E., M.D.B.&M.; Sections 1 through 36, T.22N., R.53E., M.D.B.&M.; Sections 1 through 36, T.22N., R.54E., M.D.B.&M.; Sections 6, 7, 18, 19, 30 and 31, T.22N., R.55E., M.D.B.&M.; Section 36, T.23N., R.51E., M.D.B.&M.; Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35 and 36, T.23N., R.52E., M.D.B.&M.; Sections 1 through 36,

T.23N., R.53E., M.D.B.&M.; Sections 1 through 36, T.23N., R.54E., M.D.B.&M.; Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31 and 32, T.23N., R.55E., M.D.B.&M.<sup>1</sup>

**II.**

In the remarks section of Application 83949, the Applicant states that the water applied for is to be used to mitigate over appropriation of the Diamond Valley Hydrographic Basin by being included as a component of the groundwater management plan for Diamond Valley.

**III.**

Application 83949 was timely protested by Kobeh Valley Ranch, LLC on the following grounds:<sup>1</sup>

1. The Stevens Valley [sic] groundwater basin, assigned Basin 152 by the Nevada State Engineer, is fully appropriated.
2. The granting of this application would adversely affect existing rights, including wildlife uses.
3. The granting of Application 83949 is detrimental to the public interest.
4. The granting of Application 83949 would cause injury to domestic wells.
5. The filing of Application 83949 is disingenuous in that the use sought on the application is "municipal" where the actual use for agricultural or recharge purposes as required by NRS 534.250, et seq.
6. The application is speculative and that there is no current need for the water sought.
7. The applicant has failed to comply with the provisions of NRS 533.370(4).
8. The applicant has no statutory authority to seek water rights for the benefit of third party irrigators.
9. The permittee is speculating that water will be available at an indefinite period of time when current use has ceased.

**FINDINGS OF FACTS**

**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 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.

---

<sup>1</sup> Application 83949, official records in the Office of the State Engineer.

## 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 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.

The estimated perennial yield of the Stevens Basin Hydrographic Basin is approximately 100 afa.<sup>2</sup> The committed groundwater resource in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Stevens Basin Hydrographic Basin is currently held under a single permit in the amount of 27.0 acre-feet per season.<sup>3</sup> Application 83949 was filed on June 24, 2014, and the total un-committed groundwater resource is approximately 73.0 afa. The Protestant raises the concern of injury to domestic wells; however, based on a review of the records on file in the Office of the State Engineer, there are no residences or domestic wells in Stevens Basin.<sup>4</sup> Permit 6972, Certificate 1539, for stockwater purposes has a secondary use for domestic purposes. The State Engineer finds that there is no domestic use in Stevens Basin that would be affected by approval of Application 83949. The State Engineer finds that there is groundwater available for appropriation in the Stevens Basin Hydrographic Basin in the amount of 73.0 afa.

---

<sup>2</sup> D.E. Everett and F. Eugene Rush, *Water-Resources Appraisal of the Monitor, Antelope, and Kobeh Valleys, Nevada*, Water Resources-Reconnaissance Series Report 30, (United States Geological Survey), November 1964.

<sup>3</sup> Nevada Division of Water Resources; Water Rights Database, Hydrographic Abstract, Stevens Basin Hydrographic Basin (152), August 14, 2015, official records in the Office of the State Engineer.

<sup>4</sup> Nevada Division of Water Resources' Water Rights Database, Well Drillers Log – General Report, Stevens Basin Hydrographic Basin (152), August 14, 2015, official records in the Office of the State Engineer.

### III.

Existing Permit 6972, Certificate 1539, to appropriate water from Steven's basin for stockwater purposes from an underground source, has a total diversion rate of 0.05 cfs and a calculated duty of 27.0 acre-feet per season. By limiting the amount of water applied for to 73.0 afa, which would fully appropriate Stevens Basin Hydrographic Basin if approved, the State Engineer finds that existing groundwater rights would not be impaired and therefore Application 83949 would not conflict with existing rights.

The State Engineer finds that wildlife will water at various water sources if available and stockwater permittees with surface water rights must ensure that wildlife, which have customarily used such water, will have access thereto.<sup>5</sup> The State Engineer finds that the proposed transfer of water under Application 83949 from Stevens Basin to Diamond Valley for mitigation is from an underground source, not historically available to wildlife.

### IV.

The Protestant asserts that granting the Applications would prove detrimental to the public interest in general and that the approval of the Application will be a detriment to the public interest in light of the limited amount of groundwater available in the Stevens Basin Hydrographic Basin.

Nevada Revised Statute § 533.365 provides that “[a]ny person interested may, within 30 days after the date of last publication of the notice of application, file with the State Engineer a written protest against the granting of the application, setting forth with reasonable certainty the grounds of such protest, which, except as otherwise provided in subsection 2, must be verified by the affidavit of the protestant, or an agent or attorney thereof.” The State Engineer finds that merely asserting that the granting of the applications would prove detrimental to the public interest is not stated with reasonable certainty and does not provide sufficient information.

The Protestant fails to describe how the application for an appropriation of water available in the basin will impair either quality or quantity of groundwater in the Stevens Basin Hydrographic Basin.

The State Engineer finds that the Application requests un-appropriated water within Stevens Basin Hydrographic Basin and was intended to only appropriate the amount available limited by the perennial yield of the basin.

---

<sup>5</sup> NRS § 533.367.

V.

Application 83949 is filed for municipal use and, according to the Applicant's response to the protest, is not disingenuous as it is sought to be added to the Eureka County public water where it will be used in the unincorporated town of Eureka. The Applicant also claims that the amount of water applied for, although small, is sought to provide an alternative source other than groundwater in Diamond Valley with concern of ongoing decline of water levels in Diamond Valley.

Nevada Revised Statute 533.370(1)(c) requires that the applicant provide proof satisfactory to the State Engineer of the applicant's intention in good faith and of the applicant's financial ability and reasonable expectation to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence.

In the remarks of the application filed, the Applicant describes how the water right requested is to be included into the Diamond Valley groundwater management plan. The county supplies water to the unincorporated town of Eureka and this application is intended to provide the Applicant with an alternative source of water outside of the Diamond Valley Hydrographic Basin. In addition the Applicant has authority to file for a municipal use for water.

The State Engineer finds that the application is not speculative and that the Applicant has the financial ability and the intention in good faith to construct the works necessary to place the water to beneficial use with reasonable diligence.

VI.

The Applicant and its agent were notified by certified mail dated August 25, 2015, to submit additional information regarding Application 83949 to the State Engineer's office. The Applicant was asked to respond within 30 days to submit additional information regarding Nevada Revised Statute § 533.340(3) and Nevada Revised Statute § 533.370(3). Properly endorsed certified mail receipts were received from the applicant's agent on August 31, 2015.<sup>6</sup>

In response to Nevada Revised Statute § 533.340(3) Eureka County's agent has provided that Eureka County operates the Eureka County Town Water System and the Devil's Gate General Improvement District based on the number of water meters each system maintains, not population served. Additionally, the response identifies that there is an approximate future build out capacity within the Townsite of Eureka and Devils Gate area as identified in the 2007 Eureka

---

<sup>6</sup> File No. 83949, official records in the Office of the State Engineer.

Town Water and Sewer Master Plan prepared by Lumos and Associates and updated in 2012. The State Engineer finds that the number of service connections identified and the build out capacity is an adequate response to request for additional information for municipal purposes as required by Nevada Revised Statute 533.340(3).

#### VII.

In response to Nevada Revised Statute § 533.370(3), whether the Applicant has justified the need to import water, Eureka County's agent has provided that State Engineer's Ruling 6127<sup>7</sup> established the need to import water to Diamond Valley Hydrographic Basin. It is also found that in State Engineer's Ruling 6127 the demands in Diamond Valley at the time exceeded the perennial yield of the basin as stated in the findings and remains so still. The County of Eureka further indicated that Steven's Basin Hydrographic Basin has sufficient unappropriated groundwater available. The State Engineer finds that Eureka County in Ruling 6127 does not have enough water to serve the build out capacity projected and has justified the need to import water. The State Engineer also finds that there is water available for appropriation from Steven's Basin Hydrographic Basin.

#### VIII.

In response to Nevada Revised Statute § 533.370(3), if the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out, Eureka County's agent has provided that as Eureka County's water system is a public water system and is required by law to have a conservation plan.<sup>8</sup> In addition a copy of the Eureka County, Nevada joint water conservation plan was provided with the response.<sup>9</sup> This year Eureka County has implemented stage 1 of the conservation plan. The State Engineer finds that the applicant has a conservation plan and is on file with the State Engineer's office.

---

<sup>7</sup> State Engineer's Ruling No. 6127, dated July 15, 2011, official records in the Office of the State Engineer.

<sup>8</sup> NRS § 540.131.

<sup>9</sup> Eureka County - Joint Water Conservation Plan for the Town of Eureka Water System Devils Gate GID district #1 and district #2 Crescent Valley Town Water System, official records in the office of the State Engineer.

### IX.

In response to Nevada Revised Statute § 533.370(3), whether the proposed action is environmentally sound as it relates to the basin from which the water is exported, the State Engineer has made previous determination of the meaning of 'environmentally sound' for basin of origin in State Engineer's Ruling 6127.<sup>10</sup> Eureka County claims that there are no springs in Steven's Basin Hydrographic Basin per the State Engineer's records or to the knowledge of the Applicant of any springs within the basin. The State Engineer finds that in the consideration of the proposed project that it is environmentally sound and that the minimal amount of water would be a reasonable impact on the hydrologic related resources in the basin of origin.

### X.

In response to Nevada Revised Statute § 533.370(3), whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported, Eureka County's agent has provided that there is no private land ownership in Steven's Basin Hydrographic Basin and is comprised of federal land. The Applicant, Eureka County, contends that as there is no private land, there is no future growth and development anticipated or planned within Steven's Basin Hydrographic Basin based upon the entire basin being owned by the federal government.

The State Engineer finds the use of the water is sustainable over the long-term without unreasonable impact to the resources and hydrologic-related natural resources that are dependent on those resources. A review of land status maps on file in the Office of the State Engineer shows the proposed points of diversion are public land managed by the Bureau of Land Management and that any applicant would need authorization of the governing agency of those public lands for access and would not be a limiting factor of future growth and development. The State Engineer finds that Permit 6972, Certificate 1539 is under a current grazing allotment authorization on file.<sup>11</sup>

### XI.

The reference in protest of the Applicant requesting water rights for the benefit of third party irrigators appears to be in error by the Protestant. The filing of the application is for

---

<sup>10</sup> State Engineer's Ruling No. 6127, dated July 15, 2011, official records in the Office of the State Engineer.

<sup>11</sup> File No. 6972, official records in the Office of the State Engineer.

municipal use and is not filed on behalf of a third party as Eureka County is a water operator of the Eureka County water system.

The Protestant also contends that the Applicant is speculating and that water will be available at an indefinite period of time when current use has ceased. Nevada Revised Statute 533.370(3)(d) provides that the State Engineer shall consider whether the proposed action is an appropriate long-term use that will not unduly limit the future growth and development of the basin from which the water is exported.

The State Engineer finds that the application is filed for an accepted beneficial use and that the Applicant has other permits on file for use in the Diamond Valley Hydrographic Basin.

## **XII.**

The Protestant asserts that the Applicant has failed to comply with the provisions of NRS § 533.370(4). NRS § 533.370(4) sets forth the criteria by which the State Engineer may postpone action on an application and is not a requirement for the applicant to fulfill. The State Engineer finds that this is not a valid protest issue and it is dismissed.

## **XIII.**

Nevada Revised Statute § 533.035 provides that beneficial use shall be the basis, the measure and the limit of the right to the use of water. Nevada Revised Statute § 533.060 provides that the right to use water must be limited and restricted to as much as may be necessary when reasonably and economically used for a beneficial purpose. Nevada Revised Statute § 533.070 provides that the quantity of water that may be appropriated is limited to such water as shall be reasonably required for the beneficial use to be served. Nevada Revised Statute § 533.370 requires that an applicant provide the State Engineer with proof satisfactory of his intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence and the financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence. Nevada Revised Statute § 533.375 provides that before either approving or rejecting an application the State Engineer may require such additional information as will enable him to properly guard the public interest. The State Engineer finds that the Applicant has considered the appropriation of water from Stevens Basin Hydrographic Basin as part of the Diamond Valley Overdraft Reduction Project and is found not to be speculative.

## CONCLUSIONS OF LAW

### I.

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

### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>13</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.

The Nevada Revised Statutes require the State Engineer to consider the following points when an interbasin transfer of water is proposed by a water right application:<sup>14</sup>

- (a) Whether the applicant has justified the need to import water from another basin;
- (b) If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;
- (c) Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;
- (d) Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and
- (e) Any other factor the State Engineer determines to be relevant.

### IV.

The State Engineer concludes that based on the findings the Applicant meets the additional statutory criteria required for an interbasin transfer of water from Stevens Basin under NRS § 533.370(3); therefore, Application 83949 filed within Stevens Basin can be considered for approval.

---

<sup>12</sup> NRS Chapters 533 and 534.

<sup>13</sup> NRS § 533.370(2).

<sup>14</sup> NRS § 533.370(3).

**V.**

The State Engineer concludes that based on the findings the Applicant meets the additional statutory criteria required for new appropriations for municipal use NRS § 533.340(3); therefore, the application filed in Steven's Basin can be considered for approval.

**VI.**

The State Engineer concludes that the perennial yield of Stevens Basin Hydrographic Basin is 100 afa, the existing commitments are 27.0 afs, and 73.0 afa is available for appropriation.

**VII.**

The State Engineer concludes that the approval of Application 83949 will not conflict with existing rights or threaten to prove detrimental to the public interest.

**VIII.**

The State Engineer concludes that the protest to Application 83949 is without merit and Application 83949 meets the statutory criterion for approval.

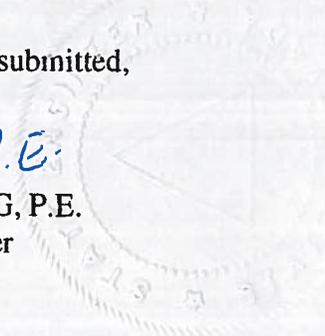
**RULING**

The protest to Application 83949 is overruled and Application 83949 is hereby granted subject to the following:

1. Payment of the statutory fees;
2. Existing rights in Stevens Basin Hydrographic Basin; and
3. Limited to the 73.0 afa available for appropriation in Stevens Basin.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer



Dated this 25th day of  
September, 2015.