

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

IN THE MATTER OF APPLICATIONS,)
85260T AND 85261T FILED TO CHANGE)
THE POINT OF DIVERSION, MANNER)
OF USE AND PLACE OF USE OF)
WATERS OF AN UNDERGROUND)
SOURCE PREVIOUSLY APPROPRIATED)
WITHIN THE MASON VALLEY)
HYDROGRAPHIC BASIN (108), LYON)
COUNTY, NEVADA.)

RULING

#6342

GENERAL

I.

Application 85260T was filed on June 24, 2015, by the Atlantic Richfield Company to change the point of diversion, manner of use and place of use of 72.0 acre-feet annually (afa), a portion of water previously appropriated under Permit 68398. The proposed manner of use is for irrigation purposes from January 1st to December 31st of each year. The proposed point of diversion is described as being located within Lot 1 (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 1, T.12N., R.25E., M.D.B.&M. The proposed place of use is described as being 18.0 acres located within the NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 1, T.12N., R.25E., M.D.B.&M. The existing manner of use is for irrigation purposes from April 1st to October 31st of each year. The existing point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T.14N., R.25E., M.D.B.&M. The existing place of use is described as 18.0 acres located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T.14N., R.25E., M.D.B.&M. and the SW $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, T.15N., R.25E., M.D.B.&M.¹

II.

Application 85261T was filed on June 24, 2015, by the Atlantic Richfield Company to change the point of diversion, manner of use and place of use of 72.0 afa, a portion of water previously appropriated under Permit 68400. The proposed manner of use is for irrigation purposes from January 1st to December 31st of each year. The proposed point of diversion is

¹ File No. 85260T, official records in the Office of the State Engineer.

described as being located within the NE¼ SE¼ of Section 1, T.12N., R.25E., M.D.B.&M. The proposed place of use is described as being 18.0 acres located within the NE¼ and N½ SE¼ of Section 1, T.12N., R.25E., M.D.B.&M. The existing manner of use is for irrigation and domestic purposes from January 1st to December 31st of each year. The existing point of diversion is described as being located within the SE¼ SE¼ of Section 3, T.14N., R.25E., M.D.B.&M. The existing place of use is described as 18.0 acres located within the NW¼ NW¼ and N½ SW¼ NW¼ of Section 3, T.14N., R.25E., M.D.B.&M. and the SW¼ NW¼ and NW¼ SW¼ of Section 35, T.15N., R.25E., M.D.B.&M.²

VII.

Applications 85260T and 85261T were protested by Charles R. and Karen R. Steele on the following grounds:

Requests for additional groundwater to be pumped in an area already identified as a "high risk" area is alarming. Additional pumping on this site would not be sound beneficial use to neighbors in an ongoing drought of 4 yrs. Since this is the first year previously sold surface and groundwater has not been used on the majority of Turf Farm property, it would be detrimental to the water supply to now allow such transfers. Property owners bordering the Turf Farm can verify 5 wells that have been replaced or worked on in the current drought (both domestic & irrig.). At the rate of decrease of the water table in this area, no changes should be made as all try to conserve. Also within a short distance of the property (and in the same risk area) 9 other wells have been replaced or will need deepened and some properties have been vacated. The history of over use of groundwaters by the Turf Farm is also a major concern. If we are to maintain a balance of water in this community for all, we must rely on the system of control available. Please see attached sheet of others concerned.

FINDINGS OF FACT

I.

If the State Engineer determines that a temporary change of the point of diversion, manner of use or place of use of water already appropriated may not be in the public interest, or may impair the water rights held by other persons, the State Engineer shall give notice of the application as provided in Nevada Revised Statute (NRS) § 533.360 and hold a hearing and

² File No. 85261T, official records in the Office of the State Engineer.

render a decision as provided for in NRS Chapter 533. The State Engineer finds that publication and a hearing on Temporary Applications 85260T and 85261T is not required.³

II.

Additional Pumpage

The Protestant asserts that, if granted, additional pumpage at these locations will conflict with the Protestant's existing domestic wells. The proposed place of use and points of diversion for both subject applications are also the same as Permit 58481, Certificate 14548 and Permit 58482, Certificate 14549, which are both active water rights that are currently in good standing. Large portions of Permit 58481, Certificate 14548 and Permit 58482, Certificate 14549, with an annual duty of 500.35 acre-feet and 269.29 acre-feet respectively, are currently owned by the National Fish and Wildlife Foundation (NFWF), and these NFWF owned portions have the same place of use as the subject applications. For this reason the State Engineer expressed concern that, if approved, the combined duty rate of all these rights would exceed 4.0 acre-feet per acre (a practice known as "stacking water") in a letter sent to the Applicant dated February 16, 2016.

In a letter dated February 19, 2016, NFWF attested that it would not exercise its water rights on the subject property during the calendar year 2016, or any subsequent irrigation season pending transfer to another property.⁴

The State Engineer finds that the amount of water sought by the subject applications (total combined annual duty of 72.0 acre-feet) is less than the refrained permitted amount (total annual duty of 769.64 acre-feet), so the approval of the subject applications would not result in any additional authorized groundwater pumping during the calendar year 2016.

III.

Illegal Use

The Protestant asserts that the Applicant has a history of over-pumping. The State Engineer finds that allegations of illegal use are initiated and investigated by the State Engineer through enforcement actions handled separately from protested application proceedings.

³ NRS § 533.345(3).

⁴ NFWF letter dated February 19, 2016; File Nos. 85260T and 85261T, official records in the Office of the State Engineer.

Because enforcement actions proceed separately, the State Engineer makes no determination of illegal use as part of this Ruling. However, a current search of State Engineer records revealed there are no enforcement actions pending against the Applicant. The State Engineer does not condone illegal use and notes that other statutory remedies exist to penalize violators; however, the State Engineer finds that denying a water right application to penalize past illegal use is inconsistent with the State Engineer's obligation to ensure water users comply with Nevada law.

CONCLUSIONS OF LAW

I.

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

II.

If an applicant is seeking a temporary change of place of diversion, manner of use or place of use of water already appropriated, the State Engineer shall approve the application if:⁶

- A. the application is accompanied by the prescribed fees;
- B. the temporary change is in the public interest; and
- C. the temporary change does not impair the water rights held by other persons.

III.

The State Engineer concludes that so long as the large portions of Permit 58481, Certificate 14548 and Permit 58482, Certificate 14549, currently owned by the National Fish and Wildlife Foundation are not pumped, approval of Applications 85260T and 85261T will not unreasonably lower the groundwater levels in the area, or further strain the groundwater resource in the hydrographic basin and granting the applications will not impair existing rights. The State Engineer also concludes that the approval of the temporary applications to change is in the public interest because it will allow the current owners of the land to operate their business.

IV.

The State Engineer concludes that adequate separate statutory procedures exist to address alleged violations of Nevada water law and that any alleged violations should be pursued through that process rather than as a protest ground against an application.

⁵ NRS Chapters 533 and 534.

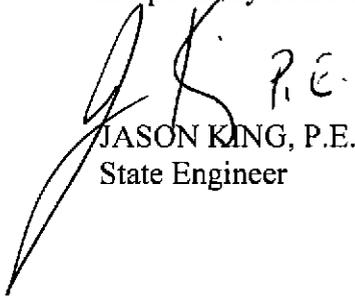
⁶ NRS § 533.345(2).

RULING

The protests to Applications 85260T and 85261T are hereby overruled and the Applications are granted subject to:

1. Existing rights
2. Payment of the statutory permit fees; and
3. Permit expiration date of December 31, 2016

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 1 day of

 April , 2016.