

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

IN THE MATTER OF APPLICATIONS)
81524, 81525, 81526, 81527, 81528, 81529,)
81530, 81531 AND 81532 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE, WITHIN)
THE TRACY SEGMENT HYDROGRAPHIC)
BASIN (83), STOREY COUNTY, NEVADA.)

RULING
#6457

GENERAL

I.

Application 81524 was filed on January 27, 2012, by TRI GID to appropriate 2.5 cubic feet per second (cfs) not to exceed 1,000 acre-feet annually (afa), of groundwater for quasi-municipal purposes within a portion of the SE¼ of Section 36, T.20N., R.21E., M.D.B.&M., a portion of Section 1, T.19N., R.21E., M.D.B.&M., portions of Sections 31, 32, 33, 34, 35 and all of Section 36, T.20N., R.22E., M.D.B.&M., Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, N½ of Section 23, and the N½ of Section 24, T.19N., R.22E., M.D.B.&M., S½ of Section 29, S½ of Section 30, Sections 31 and 32, T.20N., R.23E., M.D.B.&M., Sections 5, 6, 7, 8, 17, 18, 19, 20, 21, 29, 30, W½ of Section 9, W½ of Section 16, and W½ of Section 22, T. 19N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 11, T.19N., R.22E., M.D.B.&M.¹

II.

Application 81525 was filed on January 27, 2012, by TRI GID to appropriate 2.5 cfs not to exceed 1,000 afa, of groundwater for quasi-municipal purposes within the same place of use as identified under Application 81524. The proposed point of diversion is described as being located within NW¼ SE¼ of Section 20, T.19N., R.23E., M.D.B.&M.²

III.

Application 81526 was filed on January 27, 2012, by TRI GID to appropriate 2.5 cfs not to exceed 1,000 afa, of groundwater for quasi-municipal purposes within the same place of use as

¹ File No. 81524, official records in the Office of the State Engineer.

² File No. 81525, official records in the Office of the State Engineer.

identified under Application 81524. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T.19N., R.23E., M.D.B.&M.³

IV.

Application 81527 was filed on January 27, 2012, by TRI GID to appropriate 2.5 cfs not to exceed 1,000 afa, of groundwater for quasi-municipal purposes within the same place of use as identified under Application 81524. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, T.20N., R.23E., M.D.B.&M.⁴

V.

Application 81528 was filed on January 27, 2012, by TRI GID to appropriate 2.5 cfs not to exceed 1,000 afa, of groundwater for quasi-municipal purposes within the same place of use as identified under Application 81524. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, T.19N., R.23E., M.D.B.&M.⁵

VI.

Application 81529 was filed on January 27, 2012, by TRI GID to appropriate 2.5 cfs not to exceed 1,000 afa, of groundwater for quasi-municipal purposes within the same place of use as identified under Application 81524. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.19N., R.22E., M.D.B.&M.⁶

VII.

Application 81530 was filed on January 27, 2012, by TRI GID to appropriate 2.5 cfs not to exceed 1,000 afa, of groundwater for quasi-municipal purposes within the same place of use as identified under Application 81524. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T.19N., R.23E., M.D.B.&M.⁷

VIII.

Application 81531 was filed on January 27, 2012, by TRI GID to appropriate 2.5 cfs not to exceed 1,000 afa, of groundwater for quasi-municipal purposes within the same place of use as

³ File No. 81526, official records in the Office of the State Engineer.

⁴ File No. 81527, official records in the Office of the State Engineer.

⁵ File No. 81528, official records in the Office of the State Engineer.

⁶ File No. 81529, official records in the Office of the State Engineer.

⁷ File No. 81530, official records in the Office of the State Engineer.

identified under Application 81524. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 14, T.19N., R.22E., M.D.B.&M.⁸

IX.

Application 81532 was filed on January 27, 2012, by TRI GID to appropriate 2.5 cfs not to exceed 1,000 afa, of groundwater for quasi-municipal purposes within the same place of use as identified under Application 81524. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 7, T.19N., R.23E., M.D.B.&M.⁹

X.

Applications 81524 through 81532 were timely protested by the Pyramid Lake Paiute Tribe of Indians (Tribe) on various grounds as summarized below:

1. The applications request to appropriate groundwater from the Tracy Segment Hydrographic Basin, which is fully appropriated. Other applications in this basin have been denied pursuant to State Engineer's Ruling Nos. 5747 and 5749.
2. The manner of use is identified as quasi-municipal and the Applicant failed to provide information required under NRS § 533.340 regarding the number of persons to be served and the approximate future requirement.
3. Granting the applications would threaten to prove detrimental to the public interest in light of the over-appropriation of groundwater in the hydrographic basin and the perennial yield cannot serve existing permits and commitments of groundwater.
4. Granting the applications would threaten to prove detrimental to the Tribe and the purposes for which the Pyramid Lake Indian Reservation was created by depleting flows in the Truckee River and inflows to Pyramid Lake because of the connection, both legal and physical between the groundwater and the surface water in the basin.
5. Granting the applications may threaten to prove detrimental to the public interest in ways not yet known to the Protestant.
6. Granting the applications may threaten to prove detrimental to the public interest.
7. This Protestant incorporates by reference every relevant protest ground as set forth in any other Protest.

XI.

Applications 81524 through 81532 were timely protested by Churchill County and the Truckee-Carson Irrigation District on various grounds as summarized below:

1. There is no additional groundwater available for appropriation, *see*, State Engineer's Ruling Nos. 5747 and 5749, which already denied other applications filed for the use of groundwater in this hydrographic basin.
2. Use of groundwater will ultimately reduce surface flows in the Carson River and

⁸ File No. 81531, official records in the Office of the State Engineer.

⁹ File No. 81532, official records in the Office of the State Engineer.

conflict with the Protestants senior surface water rights under Claim 3 of the *Orr Ditch Decree*.

3. The applications are speculative in nature and the Applicant has not demonstrated the need or financial ability to construct and operate the project; therefore, granting the applications would threaten to prove detrimental to the public interest.

XII.

Applications 81524 through 81532 were timely protested by U.S. Bureau of Reclamation on various grounds as summarized below:

1. There is no unappropriated water available in the source of supply.
2. Withdrawal of groundwater in excess of the perennial yield would adversely affect existing rights and threaten to prove detrimental to the public interest.
3. If granted, the applications would be detrimental to the United States, the Newlands Project and the public interest by depleting flows in the Truckee River due to the connection between groundwater and surface water in the basin.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 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 Applications 81524 through 81532, 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.

The State Engineer has issued two separate rulings addressing the availability of groundwater in the Tracy Segment Hydrographic Basin. In State Engineer's Ruling 5747, the State Engineer found and concluded that the perennial yield of the Tracy Segment Hydrographic Basin was 11,500 afa and, by subtracting the existing groundwater commitments, that 2,920 afa of groundwater was available for appropriation. This available water was fully allocated to senior applications, leaving no significant quantities of water available for appropriation by applications filed later in time.¹⁰ Pursuant to State Engineer's Ruling 5749, the State Engineer denied additional applications to appropriate groundwater in the Tracy Segment Hydrographic Basin finding that the

¹⁰ Ruling 5747, dated June 27, 2007, official records in the Office of the State Engineer.

committed groundwater resources of the basin currently equals the groundwater basin's estimated perennial yield.¹¹

The State Engineer finds that State Engineer's Ruling 5747 allocated the remaining available groundwater in the Tracy Segment Hydrographic Basin; therefore, there is insufficient groundwater to satisfy the quantity of water requested for appropriation under Applications 81524 through 81532, inclusive.

CONCLUSIONS OF LAW

I.

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

II.

The State Engineer is prohibited by law from granting a permit 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 Tracy Segment Hydrographic Basin currently equal the groundwater basin's estimated perennial yield. Consequently, the State Engineer concludes that there is no unappropriated water available at the proposed source.

IV.

Having concluded that there is no unappropriated water at the proposed source, the State Engineer concludes that the approval of the subject applications would result in the withdrawal of groundwater in excess of the perennial yield of the Tracy Segment Hydrographic Basin, and therefore would conflict with existing rights and would threaten to prove detrimental to the public interest.

¹¹ Ruling 5749, dated July 5, 2007, official records in the Office of the State Engineer.

¹² NRS Chapters 533 and 534.

¹³ NRS § 533.370(2).

RULING

Applications 81524, 81525, 81526, 81527, 81528, 81529, 81530, 81531 and 81532 are hereby denied on the grounds that there is no unappropriated water available, and that approval of the applications would conflict with existing rights and threaten to prove detrimental to the public interest. No ruling is made on the remaining protest issues.

Respectfully submitted,

Tim Wilson, P.E.

TIM WILSON, P.E.
Acting State Engineer

Dated this 25th day of
January, 2019.