

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

IN THE MATTER OF PROTESTED)
APPLICATIONS 72787, 72788, 72789, 72790,)
72791, 72792, 72793, 72794, 72795, 72796 AND)
72797 FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF)
UNDERGROUND WATER PREVIOUSLY)
APPROPRIATED UNDER PERMIT 53950,)
PERMIT 53951, PERMIT 54060, PERMIT 54062,)
PERMIT 54066, PERMIT 54068 AND PERMIT)
54069, WITHIN THE THREE LAKES VALLEY-)
SOUTHERN PART, HYDROGRAPHIC BASIN)
(211), CLARK COUNTY, NEVADA.)

RULING
5621

GENERAL

I.

Application 72787 was filed on May 17, 2005, by the Southern Nevada Water Authority to change the point of diversion and place of use of 6.0 cubic feet per second (cfs) of underground water previously appropriated under Permit 53950. The water is to be used for municipal and domestic purposes. The proposed place of use is all of Clark County as defined in Nevada Revised Statute (NRS) § 243.035. The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 12, T.16S., R.56E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211). The existing point of diversion is described as being located within the NE¼ NE¼ of Section 30, T.12S., R.61E., M.D.B.&M., within the Tikapoo Valley - Southern Part Hydrographic Basin (169B).¹

II.

Application 72788 was filed on May 17, 2005, by the Southern Nevada Water Authority to change the point of diversion and place of use of 10.0 cfs of underground water previously appropriated under Permit 53951. The water is to be used for municipal and domestic purposes. The proposed place of use is all of Clark County as defined in NRS § 243.035. The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 12, T.16S., R.56E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211). The existing point of diversion is described as

¹ File No. 72787, official records in the Office of the State Engineer.

being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T.11S., R.61E., M.D.B.&M., within the Tikapoo Valley - Southern Part Hydrographic Basin (169B).²

III.

Application 72789 was filed on May 17, 2005, by the Southern Nevada Water Authority to change the point of diversion and place of use of 6.0 cfs of underground water previously appropriated under Permit 54068. The water is to be used for municipal and domestic purposes. The proposed place of use is all of Clark County as defined in NRS § 243.035. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T.16S., R.56E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211). The existing point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, T.13S., R.59E., M.D.B.&M., within the Three Lakes Valley - Northern Part Hydrographic Basin (168).³

IV.

Application 72790 was filed on May 17, 2005, by the Southern Nevada Water Authority to change the point of diversion and place of use of 10.0 cfs of underground water previously appropriated under Permit 54069. The water is to be used for municipal and domestic purposes. The proposed place of use is all of Clark County as defined in NRS § 243.035. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T.16S., R.56E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211). The existing point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T.14S., R.59E., M.D.B.&M., within the Three Lakes Valley - Northern Part Hydrographic Basin (168).⁴

V.

Application 72791 was filed on May 17, 2005, by the Southern Nevada Water Authority to change the point of diversion and place of use of 6.0 cfs, not to exceed 1,700 acre-feet annually, of underground water previously appropriated under Permit 54060. The water is to be used for municipal and domestic purposes. The proposed place of use is all of Clark County as defined in NRS § 243.035. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T.16S., R.56E.,

² File No. 72788, official records in the Office of the State Engineer.

³ File No. 72789, official records in the Office of the State Engineer.

⁴ File No. 72790, official records in the Office of the State Engineer.

M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211). The existing point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T.13S., R.58E., M.D.B.&M., within the Three Lakes Valley - Northern Part Hydrographic Basin (168).⁵

VI.

Application 72792 was filed on May 17, 2005, by the Southern Nevada Water Authority to change the point of diversion and place of use of 2.0 cfs, a portion of underground water previously appropriated under Permit 54062. The water is to be used for municipal and domestic purposes. The proposed place of use is all of Clark County as defined in NRS § 243.035. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T.16S., R.56E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211). The existing point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.17S., R.58E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211).⁶

VII.

Application 72793 was filed on May 17, 2005, by the Southern Nevada Water Authority to change the point of diversion and place of use of 2.0 cfs, a portion of underground water previously appropriated under Permit 54062. The water is to be used for municipal and domestic purposes. The proposed place of use is all of Clark County as defined in NRS § 243.035. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T.16S., R.57E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211). The existing point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.17S., R.58E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211).⁷

VIII.

Application 72794 was filed on May 17, 2005, by the Southern Nevada Water Authority to change the point of diversion and place of use of 2.0 cfs, a portion of

⁵ File No. 72791, official records in the Office of the State Engineer.

⁶ File No. 72792, official records in the Office of the State Engineer.

⁷ File No. 72793, official records in the Office of the State Engineer.

underground water previously appropriated under Permit 54062. The water is to be used for municipal and domestic purposes. The proposed place of use is all of Clark County as defined in NRS § 243.035. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 19, T.16S., R.57E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211). The existing point of diversion is described as being located within the NE¼ SW¼ of Section 7, T.17S., R.58E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211).⁸

IX.

Application 72795 was filed on May 17, 2005, by the Southern Nevada Water Authority to change the point of diversion and place of use of 3.33 cfs, a portion of underground water previously appropriated under Permit 54066. The water is to be used for municipal and domestic purposes. The proposed place of use is all of Clark County as defined in NRS § 243.035. The proposed point of diversion is described as being located within the Lot 9 of Section 34, T.16S., R.57E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211). The existing point of diversion is described as being located within the NW¼ SE¼ of Section 27, T.14S., R.59E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211).⁹

X.

Application 72796 was filed on May 17, 2005, by the Southern Nevada Water Authority to change the point of diversion and place of use of 3.34 cfs, a portion of underground water previously appropriated under Permit 54066. The water is to be used for municipal and domestic purposes. The proposed place of use is all of Clark County as defined in NRS § 243.035. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 6, T.17S., R.58E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211). The existing point of diversion is described as being located within the NW¼ SE¼ of Section 27, T.14S., R.59E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211).¹⁰

⁸ File No. 72794, official records in the Office of the State Engineer.

⁹ File No. 72795, official records in the Office of the State Engineer.

¹⁰ File No. 72796, official records in the Office of the State Engineer.

XI.

Application 72797 was filed on May 17, 2005, by the Southern Nevada Water Authority to change the point of diversion and place of use of 3.33 cfs, a portion of underground water previously appropriated under Permit 54066. The water is to be used for municipal and domestic purposes. The proposed place of use is all of Clark County as defined in NRS § 243.035. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 8, T.17S., R.58E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211). The existing point of diversion is described as being located within the NW¼ SE¼ of Section 27, T.14S., R.59E., M.D.B.&M., within the Three Lakes Valley - Southern Part Hydrographic Basin (211).¹¹

XII.

Applications 72787, 72788, 72789, 72790, 72791, 72792, 72793, 72794, 72795, 72796 and 72797 were timely protested by the following entities:^{1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11}

Brauer Living Trust (72795, 72796, 72797)

Indian Springs Civic Association (72787 through 72797, inclusive)

Jo Anne Garrett (72787)

Nevada Department of Corrections (72787 through 72794, inclusive)

Russell D. Highfield (72789, 72790, 72791, 72793 through 72797, inclusive)

Sierra Club – Toiyabe Chapter (72787 through 72794, inclusive)

United States Air Force - Nellis Air Force Base (72787 through 72797, inclusive)

United States Department of Energy (72787 through 72797, inclusive)

United States Department of Interior, Fish and Wildlife Service (72787 through 72797, inclusive)

United States Department of Interior, National Park Service (72787 through 72797, inclusive)

XIII.

The protests of the Brauer Living Trust and Indian Springs Civic Association are hereby summarized as follows:

¹¹ File No. 72797, official records in the Office of the State Engineer.

1. The Southern Nevada Water Authority (SNWA) requests 8,018 acre-feet annually from Three Lakes Valley South (211), which is in excess of the maximum 2,618 acre-feet annually allowed in State Engineer's Ruling No. 5465.
2. SNWA has other applications for appropriations of water in Three Lakes Valley South (211) that have not been heard by the State Engineer. These other applications should be rejected before considering the current applications.
3. The applications will have an adverse impact on water right holders in Indian Springs Valley Basin (161) and the community of Indian Springs, Creech AFB, and Cactus Springs. The applications will essentially eliminate inflow to Indian Springs Valley and will cause a broad lowering of the water table.
4. The proposed points of diversion of many of these applications are near the Indian Springs Valley Basin (161) and in close proximity to one another. Pumping at these locations may cause a drawdown cone and cause a water flow gradient, which will pull water from Indian Springs.
5. The points of diversion will be moved from north of the Las Vegas shear zone to south of the shear zone allowing the impacts of pumping to propagate quicker to points south of the shear zone.
6. Mitigation will not protect affected water rights and senior and domestic water rights could be adversely affected for many years.
7. Downstream basins that would be affected by these applications are already over-appropriated, therefore it is essential that inflow to Indian Springs Valley Basin not be impacted or eliminated.
8. The applications propose to remove groundwater flow before it reaches the Indian Springs Valley Basin, a part of the Death Valley Flow System, endangering regional springs and geological features, which support federally protected flora and fauna thereby, threatening to prove detrimental to the public interest.

9. The public interest is not served by removing groundwater to support unsustainable growth in the Las Vegas Valley. There is no effective indoor conservation of water. Reducing consumption by some users to promote consumption by other users is not conservation. Importation of rural ground water to the detriment of rural residents to promote urban growth is an abuse of public interest.
10. The applications may adversely affect the public interest of nearby communities and result in environmental damage, loss of lifestyle choice, loss of historical continuity or economic hardship.

XIV.

The protest of Jo Anne Garrett is summarized as follows:

1. The protest/hearing process is unfair to individuals and small organizations due to initial and subsequent costs. The State Engineer should provide adequate assistance to protestants equal to that provided by the SNWA in completing and pursuing their applications.
2. The fee required to file a protest is a denial of due process, right to petition the government, and equal protection under the law, and the protestant cannot afford an attorney, hydrologist or court reporter expenses.
3. The inter-basin transfer of underground water rights should never be allowed, nor should the exportation of water from one basin to another for a variety of hydrological, biological, technical and socio-economic reasons.

XV.

The protest of the Nevada Department of Corrections is hereby summarized as follows:

1. Proposed action conflicts with our existing water rights.

XVI.

The protest of Russell D. Highfield is hereby summarized as follows:

Loss of historic spring, loss of Indian Springs, loss of ground water and quality of life, etc.

XVII.

The protest of the Sierra Club – Toiyabe Chapter is hereby summarized as follows:

1. State Engineer's Ruling No. 5465 provided for pumping 8,905 acre-feet annually from 4 basins – Three Lakes North and South and Tikapoo North and South. In seeking to change ground water from 3 basins into 1 basin and increase the quantity of water pumped and exported from a single basin, the applications exceed the 2,618 acre-feet annually the State Engineer allowed for appropriation in Three Lakes Valley South.
2. Application 72791 piece-meals the application process and puts an undue burden on Protestants who must defend existing rights and Application 72791 should be included during the review of Applications 72787-72790 and 72792-72797.
3. The SNWA has other applications for appropriations of water in Three Lakes Valley South, Tikapoo and Indian Springs basins yet to be heard and if not rejected, they should be considered in aggregate with the subject applications. The State Engineer should end the extra appropriations hanging over senior water right owners and end the speculation about availability of ground water.
4. The proposed changes in point of diversion could have a serious deleterious effect on State and Federally recognized protected and rare species reliant on spring discharges.
5. Senior water rights could be adversely impacted and nearby basins are over-allocated.
6. SNWA does not have an indoor conservation program and cannot demonstrate the amount of water being conserved through its outdoor conservation program.
7. The certainty of continuous water supply for a municipal use must be extremely high and it would threaten to prove detrimental to the public interest to allow growth to be dependent on a resource where the SNWA will not be in a position to stop pumping if impacts are shown.
8. A decision to allow groundwater pumping and export to Las Vegas growth does not have a high degree of scientific certainty that impacts will not negatively impact Nevada's endemic wildlife.

XVIII.

The protests of the United States Air Force - Nellis Air Force Base, United States Department of Energy, United States Department of Interior, Fish and Wildlife Service and United States Department of Interior, National Park Service were withdrawn prior to the administrative hearing.

XIX.

After all parties were duly noticed by certified mail,¹² a public administrative hearing was held on November 28, 29 and 30, 2005, regarding protested Applications 72787 through 72797, inclusive, in Carson City, Nevada, before representatives of the Office of the State Engineer.

FINDINGS OF FACT

I.

The State Engineer finds that the only Protestants who appeared at the public administrative hearing and presented testimony and evidence in support of their protest claims were the Indian Springs Civic Association and the Sierra Club-Toiyabe Chapter with a consolidated case and the Nevada Department of Corrections. Russell D. Highfield and Jo Anne Garrett did not appear at the hearing and did not present any testimony or evidence in support of their protest claims. The Brauer Living Trust did not present an evidentiary case but rather chose to present only public comment.

For the Protestants that did not present a case, their protest claims will be evaluated based on the information provided on the protest form and where the evidence indicates or the State Engineer believes the protest raises meritorious issues those claims will be addressed below. The protests of the Federal agencies were withdrawn in conjunction with a stipulation between themselves and the Applicant.¹³ It should be noted that the State Engineer was not a signatory to the stipulation and the stipulation is binding only upon the participating parties and is not binding on the State Engineer.

II.

Any person interested may, within 30 days from the date of last publication of the notice of application, file with the State Engineer a written protest against the granting of

¹² Exhibit No. 1 and Transcript, public administrative hearing before the State Engineer, November 28, 29 and 30, 2005, (hereafter "Transcript" and "Exhibits").

¹³ Exhibit No. 92.

the application, setting forth with reasonable certainty the grounds of such protest, which shall be verified by the affidavit of the protestant, his agent or attorney.¹⁴ A nominal filing fee of \$25 must accompany the protest.¹⁵ The State Engineer shall consider the protest, and may, at his discretion, hold a hearing.¹⁶ A protestant has the right to representation by an attorney or other agent at the hearing, but representation is not a requirement and it is not uncommon to have protestants represent themselves at hearings before the State Engineer.

Proceedings at a hearing on protested applications are reported by a certified court reporter and the costs associated with the recordation of the hearing are borne by the applicant and the protestants. The applicant and protestants bear pro rata, based on the percentage of the transcript taken up by their own case, the fees of the court reporter for reporting and transcribing the portion of the transcript taken up by their respective cases.¹⁷ If the protestant chooses not to put on an evidentiary case or otherwise participate in the hearing, the protestant is not charged any fee for the court reporter.

Travel can also be a significant expense for participants in a hearing. The State Engineer's office attempts to minimize this cost as much as practicable. In this case, the hearing was held in Carson City, Nevada, at the Legislative building, but arrangements were made to allow for video conferencing in Las Vegas. A number of individuals took advantage of this option and participated in the hearing through public comment via the video conferencing in Las Vegas. The hearing was also broadcast live over the Internet for those members of the public unable to travel to Las Vegas or Carson City.

One Protestant claimed that there has been a denial of due process and equal protection under the law due to the cost associated with the protest and subsequent hearing process. As an individual, the Protestant states that she does not have the financial resources to protest each application, hire an attorney and expert witnesses, or pay court reporter expenses.¹⁸

The State Engineer finds the State Legislature has provided the format through which the public can protest and participate in the hearing process. It can require money

¹⁴ NRS § 533.365.

¹⁵ NRS § 533.435.

¹⁶ NRS § 533.365.

¹⁷ NAC § 533.220.

¹⁸ Exhibit No. 14.

if an attorney and expert witnesses are hired and to pay for the court reporter, but that is the reality of the hearing process. It should be noted that responding to a protest costs the applicant similar expenses, in addition to having to wait for a decision on its application until such time as the protest is resolved.

The constitutional guarantee of equal protection of the laws means that no person or class of persons is denied the same protection of the laws enjoyed by other persons or other classes in like circumstances. The equal protection of the laws of a state means its courts or hearing process is open to all on the same conditions. Due process of law implies the right of the person affected thereby to be present before the tribunal, which pronounces judgments upon the question of life, liberty or property to be heard.

The State Engineer finds the Protestants in this matter were treated no differently than any other protestant and were provided notice and opportunity to be heard in accordance to the protest procedures set forth by the Nevada State Legislature.

III.

Protestant Garrett raised the issue that an interbasin transfer of underground water should never be allowed. Nevada water law provides for the interbasin transfer of underground water provided the applicant meets all of the necessary criteria found in the Nevada Revised Statutes, including but not limited to NRS §§ 533.370(5) and (6). The State Engineer finds that Nevada water law provides for the interbasin transfer of ground water; therefore, the protest claim is dismissed.

IV.

Permits 53950, 53951, 54060, 54062, 54066, 54068 and 54069 were issued under State Engineer's Ruling No. 5465 and Ruling No. 5533.¹⁹ These permits were granted for an interbasin transfer of water. An interbasin transfer of water is where the point of diversion is in one hydrographic basin and the place of use is in a different hydrographic basin. The term interbasin transfer does not apply to changes of point of diversion from one hydrographic basin to another.

Criteria that must be considered prior to the approval of an application for an interbasin transfer of water are found in Nevada Revised Statute § 533.370(6) and provide that:

¹⁹ State Engineer's Ruling No. 5465, dated January 4, 2005, and State Engineer's Ruling No. 5533, dated September 26, 2005, official records in the Office of the State Engineer.