QA: NA

IN THE OFFICE OF THE STATE ENGINEER

1197

MOL.20090324.0118

OF THE STATE OF NEVADA

ORDER

WHEREAS, NRS § 534.120 provides that within an area that has been designated by the State Engineer where, in his judgment, the ground-water basin is being depleted, the State Engineer in his administrative capacity is empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved;

WHEREAS, the State Engineer designated the Amargosa Desert Hydrographic Basin as provided under the provisions of NRS § 534.030 by Order No. 724, dated May 14, 1979;

WHEREAS, an administrative hearing was held on September 5-6, 2007,[1] where evidence and testimony was received regarding the potential impacts of regional pumping on existing rights, particularly the federally reserved water right at Devils Hole.[2] The federally reserved water right specifies a threshold water level at Devils Hole. Information provided at the hearing show the water level in Devils Hole is only 0.6 to 0.7 feet above the threshold level mandated by the U.S. District Court;[3]

WHEREAS, the State Engineer finds that conditions warrant the curtailment of future appropriations of underground water and additional regulation of change applications within a portion of the Amargosa Desert Hydrographic Basin;

WHEREAS, Devils Hole is located within the Amargosa Desert Hydrographic Basin and is further described as being within the SW¼ SW¼ SE¼ of Section 36, T.17S., R.50E., M.D.B.&M. within a detached unit of the Death Valley National Park and the boundaries of the Ash Meadows Wildlife Refuge, Nye County, Nevada;

NOW THEREFORE, it is ordered that, with the following exceptions, any applications to appropriate additional underground water and any application to change the point of diversion of an existing ground-water right to a point of diversion closer to Devils Hole, described as being within a 25 mile radius from Devils Hole within the Amargosa Desert Hydrographic Basin, will be denied;

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[1] Transcript and Exhibits, public administrative hearing September 5-6, 2007, official records of the Office of the State Engineer.

[2] *Cappaert v. United States*, 426 U.S. 128, (1976).

[3] Note, The District Court's decision was upheld by the Court of Appeals and the Supreme Court of the United States. See, *United States v. Cappaert*, 375 F. Supp. 456 (D. Nev. 1974); *Cappaert v. United States*, 426 U.S. 128, 141 (1976); *United States v. Cappaert*, 455 F. Supp. 81 (D. Nev. 1978).

EXCEPTIONS:

1. Any application within the described area that seeks to change an existing point of diversion closer to Devils Hole but remains within its existing place of use and is no more than ½ mile from its original point of diversion.

2. Those applications filed which seek to appropriate 2.0 acre-feet per year or less, may be considered and shall be processed subject to NRS 533 and 534.

3. For projects that require changes of multiple existing rights, the State Engineer may compare the net impact to Devils Hole of the proposed changes to the impacts to Devils Hole of the base rights. If the net impact of the proposed changes is the same or less than the base right impacts, as determined by the State Engineer, such change applications may be considered and shall be processed subject to NRS 533 and 534. In no such case shall new points of diversion be allowed within ten (10) miles of Devils Hole.

4. Those applications for environmental permits filed pursuant to NRS 533.437 to 533.4377, inclusive.

5. Those applications filed pursuant to NRS 533.371.

TRACY TAYLOR, P.E.
State Engineer

Dated at Carson City, Nevada this

04th day of November, 2008.