

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIM WILSON, P.E., Nevada State
Engineer, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES,

Appellant,

vs.

PAHRUMP FAIR WATER, LLC., a
Nevada limited-liability company;
STEVEN PETERSON, an individual;
MICHAEL LACH, an individual; PAUL
PECK, an individual; BRUCE
JABOUR, an individual; and GERALD
SCHULTE, an individual;

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

RESPONDENTS' NOTICE
OF SUPPLEMENTAL AUTHORITY (NRAP 31(e))

After briefing was completed in this case, the 2019 Legislature passed Assembly Bill 95. Assembly Bill 95 adds a new subsection to NRS 534.110 which requires the State Engineer to allow domestic well owners to continue to withdraw 0.5 acre-feet of water from their wells in the event that a curtailment of pumping is ordered. A full copy of the enrolled bill is attached hereto as Exhibit 1.

This Court should take judicial notice of Assembly Bill 95 because, in their respective briefs, the parties debated the effect that a future curtailment of pumping would have on newly drilled domestic wells in Pahrump. Specifically, in his opening brief, the State Engineer averred that “any new domestic wells will in turn be the first ones ordered to cease their use of water in the event of a curtailment.”¹ Respondents challenged this proposition.²

The passage and approval of Assembly Bill 95 definitively settles the issue. In the event of a curtailment in Pahrump, the Legislature has now explicitly authorized domestic well users to continue operating their domestic wells, regardless of the date the wells were drilled. In other words, if the district court’s order is affirmed, and new domestic wells are allowed, there is no risk that such wells will later be shut off during a curtailment and homeowners left without a water source.

Under NRAP 31(e), a party is specifically authorized to file a notice of supplemental authorities to bring “pertinent and significant authorities” to the Court’s attention. In addition, NRS 47.140 & NRS 47.150 require a court to take judicial notice of both the Nevada Revised Statutes and “[a]ny other statute of this State if brought to the attention of the court by its title and the day of its passage.”

¹ State Engineer’s Opening Brief at 6.

² Respondents’ Answering Brief at 32, n.100.

Assembly Bill 95 was passed on May 23, 2019, approved by the Governor on June 3, 2019, and became effective on July 1, 2019. The title of the bill is:

AN ACT relating to water; requiring the State Engineer to continue to allow withdrawals of groundwater from domestic wells under certain circumstances in groundwater basins where withdrawals have been restricted to conform to priority rights; and providing other matters properly relating thereto.

Accordingly, Respondents respectfully request this Court take judicial notice of the passage of Assembly Bill 95 and give its provisions whatever weight and consideration the Court deems appropriate under the circumstances.

DATED this 29th day of October, 2019.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b), I certify that I am an employee of TAGGART & TAGGART, LTD., and that on this day, I served, or caused to be served, a true and correct copy of the foregoing document by electronic service to:

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DATED this 29th day of October, 2019.

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Assembly Bill No. 95–Committee on Natural
Resources, Agriculture, and Mining

CHAPTER.....

AN ACT relating to water; requiring the State Engineer to continue to allow withdrawals of groundwater from domestic wells under certain circumstances in groundwater basins where withdrawals have been restricted to conform to priority rights; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Engineer to conduct investigations in any basin or portion thereof where it appears that the average annual replenishment to the groundwater supply may not be adequate for the needs of all permittees and vested rights claimants. If the State Engineer confirms that the average annual replenishment to the groundwater supply may not be adequate, he or she may order that withdrawals, including withdrawals from domestic wells, be restricted to conform to priority rights. (NRS 534.110)

Existing law: (1) authorizes the State Engineer to designate as a critical management area any groundwater basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin; and (2) requires the State Engineer to designate as a critical management area any groundwater basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin upon receipt of a petition for such designation. If a groundwater basin is designated as a critical management area for at least 10 consecutive years, the State Engineer is required to order that withdrawals, including withdrawals from domestic wells, be restricted to conform to priority rights. (NRS 534.110)

This bill provides that if a court of competent jurisdiction orders the State Engineer to restrict withdrawals to conform to priority rights or if the State Engineer orders that withdrawals be restricted to conform to priority rights in any of these groundwater basins, the State Engineer must limit the restriction on withdrawals from domestic wells to allow a domestic well to continue to withdraw 0.5 acre-feet of water per year if the owner of the domestic well installs or has installed a water meter to record the withdrawal.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 534.110 is hereby amended to read as follows:

534.110 1. The State Engineer shall administer this chapter and shall prescribe all necessary regulations within the terms of this chapter for its administration.

2. The State Engineer may:

(a) Require periodical statements of water elevations, water used, and acreage on which water was used from all holders of permits and claimants of vested rights.



(b) Upon his or her own initiation, conduct pumping tests to determine if overpumping is indicated, to determine the specific yield of the aquifers and to determine permeability characteristics.

3. The State Engineer shall determine whether there is unappropriated water in the area affected and may issue permits only if the determination is affirmative. The State Engineer may require each applicant to whom a permit is issued for a well:

(a) For municipal, quasi-municipal or industrial use; and

(b) Whose reasonably expected rate of diversion is one-half cubic foot per second or more,

→ to report periodically to the State Engineer concerning the effect of that well on other previously existing wells that are located within 2,500 feet of the well.

4. It is a condition of each appropriation of groundwater acquired under this chapter that the right of the appropriator relates to a specific quantity of water and that the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion. In determining a reasonable lowering of the static water level in a particular area, the State Engineer shall consider the economics of pumping water for the general type of crops growing and may also consider the effect of using water on the economy of the area in general.

5. This section does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as any protectable interests in existing domestic wells as set forth in NRS 533.024 and the rights of holders of existing appropriations can be satisfied under such express conditions. At the time a permit is granted for a well:

(a) For municipal, quasi-municipal or industrial use; and

(b) Whose reasonably expected rate of diversion is one-half cubic foot per second or more,

→ the State Engineer shall include as a condition of the permit that pumping water pursuant to the permit may be limited or prohibited to prevent any unreasonable adverse effects on an existing domestic well located within 2,500 feet of the well, unless the holder of the permit and the owner of the domestic well have agreed to alternative measures that mitigate those adverse effects.

6. Except as otherwise provided in subsection 7, the State Engineer shall conduct investigations in any basin or portion thereof where it appears that the average annual replenishment to the groundwater supply may not be adequate for the needs of all



permittees and all vested-right claimants, and if the findings of the State Engineer so indicate, *except as otherwise provided in subsection 9*, the State Engineer may order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted to conform to priority rights.

7. The State Engineer:

(a) May designate as a critical management area any basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin.

(b) Shall designate as a critical management area any basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin upon receipt of a petition for such a designation which is signed by a majority of the holders of certificates or permits to appropriate water in the basin that are on file in the Office of the State Engineer.

➡ The designation of a basin as a critical management area pursuant to this subsection may be appealed pursuant to NRS 533.450. If a basin has been designated as a critical management area for at least 10 consecutive years, *except as otherwise provided in subsection 9*, the State Engineer shall order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted in that basin to conform to priority rights, unless a groundwater management plan has been approved for the basin pursuant to NRS 534.037.

8. In any basin or portion thereof in the State designated by the State Engineer, the State Engineer may restrict drilling of wells in any portion thereof if the State Engineer determines that additional wells would cause an undue interference with existing wells. Any order or decision of the State Engineer so restricting drilling of such wells may be reviewed by the district court of the county pursuant to NRS 533.450.

9. If a court of competent jurisdiction orders the State Engineer to restrict withdrawals to conform to priority rights or if pursuant to subsection 6 or 7 the State Engineer orders that withdrawals be restricted to conform to priority rights, the State Engineer must limit the restriction of withdrawals from a domestic well to allow a domestic well to continue to withdraw 0.5 acre-feet of water per year, which must be recorded by a water meter.

Sec. 2. This act becomes effective on July 1, 2019.

