

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

ORDER

#1197A

**CURTAILMENT OF NEW APPROPRIATIONS OF GROUNDWATER
WITHIN THE AMARGOSA VALLEY HYDROGRAPHIC BASIN (230),
NYE COUNTY, NEVADA**

WHEREAS, Nevada Revised Statute (NRS) § 534.120 provides that within an area that has been designated by the State Engineer, where in the judgment of the State Engineer, the groundwater basin is being depleted, the State Engineer in his or her administrative capacity is empowered to make such rules, regulations and orders as are deemed essential for the welfare of the areas involved.

WHEREAS, the State Engineer designated the Amargosa Valley Hydrographic Basin as provided under the provisions of NRS § 534.030 by the following Orders:

1. Order No. 293 dated September 20, 1965, designated a portion of the groundwater basin;
2. Order No. 296 dated January 21, 1966, rescinded Order No. 293; and
3. Order No. 724 dated May 14, 1979, designated the groundwater basin.

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 water 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 showed the water level in Devils Hole was only 0.6 to 0.7 feet above the threshold level mandated by the U.S. District Court.³

WHEREAS, the State Engineer found that conditions warranted 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 SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ 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.

¹ Transcript and Exhibits, public administrative hearing, in the matter of protested Applications 69836, et seq., September 5-6, 2007, official records in 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).

WHEREAS, resulting from this hearing, the State Engineer issued Order No. 1197 dated November 4, 2008, which further restricted the appropriation and movement of water within the Amargosa Desert Hydrographic Basin. The State Engineer is hereby amending Order No. 1197 to eliminate exception Number 2 under Order No. 1197. Order No. 1197 is no longer in effect.

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 groundwater 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.

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 permitted place of use and is no more than ½ mile from its original point of diversion.
2. 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 Chapters 533 and 534. In no such case shall new points of diversion be allowed within ten (10) miles of Devils Hole.
3. Those applications for environmental permits filed pursuant to NRS §§ 533.437 to 533.4377, inclusive.
4. Those applications filed pursuant to NRS § 533.371.



JASON KING, P.E.
State Engineer

Dated at Carson City, Nevada this

12th day of January, 2018.