

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

IN THE MATTER OF APPLICATION)
69029 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE)
PAHRUMP VALLEY HYDROGRAPHIC)
BASIN (162), NYE COUNTY,)
NEVADA.)

RULING

#5163

GENERAL

I.

Application 69029 was filed on August 5, 2002, by Luben R. Stoynov to appropriate 0.0156 cubic feet per second, not to exceed 2.0164 acre-feet annually, of underground water from the Pahrump Valley Hydrographic Basin. The proposed manner and place of use are stated on the application form as being for commercial purposes within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T.21S., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 13.¹

FINDINGS OF FACT

I.

A water right application is filed for a single major manner of use that must be clearly stated under Item No. 3 on the application form. In the case of the subject application, there exists a discrepancy between the proposed manner of use found under Item No. 3 on the application form and its description contained within the remarks section. While Item No. 3 states that the intended use is for commercial purposes, the proposed manner of use is actually for quasi-municipal since the remarks section of the applications indicates that the water is to be used to service multiple living units, more specifically, two single family residences and three existing one bedroom apartments.¹ Based upon this description, the State Engineer finds that

Application 69029 represents a request for a new appropriation of underground water from the Pahrump Valley Hydrographic Basin for quasi-municipal purposes.

II.

Nevada Revised Statute § 534.120 provides that within an area that has been designated by the State Engineer where, in his judgment, the groundwater 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. The application of this provision of the NRS to the Pahrump Valley Hydrographic Basin is evidenced in a series of orders handed down by the State Engineer beginning with Order No. 176, which was issued on March 11, 1941.² This initial order described and designated a portion of the Pahrump Valley Hydrographic Basin as a groundwater basin in need of additional administration. The boundaries of the Pahrump Valley Hydrographic Basin were expanded by the issuance of State Engineer's Order Nos. 193 and 205, on January 15, 1948, and January 23, 1953, respectively.^{3, 4}

By designating the Pahrump Valley Hydrographic Basin, the State Engineer set the stage for further restrictions relating to the appropriation of underground water from the basin. State Engineer's Order No. 381, issued on June 1, 1970, gave notice that no further appropriations of water would be approved for irrigation purposes.⁵ This trend towards further restrictions in the manner in which ground water could be appropriated from the

¹ File No. 69029, official records in the Office of the State Engineer.

² State Engineer's Order No. 176, Order Book No. 1, official records in the Office of the State Engineer.

³ State Engineer's Order No. 193, Order Book No. 1, official records in the Office of the State Engineer.

⁴ State Engineer's Order Number 205, Order Book Number 2, official records in the Office of the State Engineer.

⁵ State Engineer's Order No. 381, Order Book No. 3, official records in the Office of the State Engineer.

Pahrump Valley was continued with the issuance of State Engineer's Order No. 1107, on November 8, 1994. Under the guidelines set forth under this order, all applications which requested new appropriations of underground water from the designated portion of the Pahrump Valley Hydrographic Basin, would be denied with the following exceptions. Those applications filed for commercial (non-living units) or industrial purposes off the alluvial fan, which seek to appropriate 1,800 gallons per day or less, and those applications filed for environmental purposes pursuant to NRS 533.437.⁶ The State Engineer finds that the request for water made under Application 69029 does not qualify for exception under State Engineer's Order 1107; therefore, it must be considered for denial.

III.

The State Engineer has previously denied water right applications that requested new appropriations of underground water for quasi-municipal purposes from the Pahrump Valley Hydrographic Basin.⁷ Under the provisions established under NRS 533.370(3), the State Engineer may deny an application that requests a new appropriation of underground water if previous applications for the same manner of use have been denied within the same groundwater basin. This regulation also allows the State Engineer to deny the application before it enters the statutory publication period. The State Engineer finds that Application 69029 can be considered for denial in accordance with NRS 533.370(3).

⁶ State Engineer's Order No. 1107, Order Book No. 8, official records in the Office of the State Engineer.

⁷ State Engineer's Ruling Nos. 1833, 1862, 1897, 1976, 1918, 2836, 3216, 3248, 3462, 3486, 3496, 3505, 3607, 3636, 3680, 3758, 4936, 5042 and 5147, official records in the Office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁹

- 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 protectible 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.

Water right applications that request new appropriations of underground water for quasi-municipal purposes from the designated portion of the Pahrump Valley Hydrographic Basin are to be denied pursuant to State Engineer's Order No. 1107. The State Engineer concludes that the approval of Application 69029 would violate the provisions of State Engineer's Order No. 1107 and would threaten to prove detrimental to the public interest.

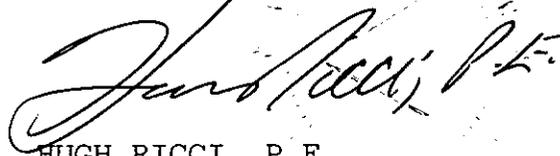
⁸ NRS chapters 533 and 534.

⁹ NRS § 533.370(3).

RULING

Application 69029 is hereby denied on the grounds that its approval would violate State Engineer's Order No. 1107 and would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MB/jm

Dated this 17th day of
October 2002.