

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

IN THE MATTER OF APPLICATION 70277)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE PAHRUMP VALLEY ARTESIAN)
BASIN (162), NYE COUNTY, NEVADA.)

RULING

#5346

GENERAL

I.

Application 70277 was filed on July 30, 2003, by Vernon R. and Irene Van Winkle to appropriate 1.0 acre-foot annually of underground water from the Pahrump Valley Hydrographic Basin. The proposed manner and place of use is for commercial purposes within the NE¼ SE¼ SE¼ SE¼ of Section 13, T.20S., R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of said Section 13. Information found within the remarks section of this application indicates that it was submitted to secure water for the operation of a television station.¹

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) 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 issued by the State Engineer beginning with State Engineer's Order No. 176, dated March 11, 1941. This initial order

¹ File No. 70277, official records in the Office of the State Engineer.

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.

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 would be approved for irrigation purposes. The denial of new applications was expanded on October 26, 1987, by State Engineer's Order No. 955, to include all applications located on the Pahrump and Manse alluvial fans. The State Engineer finds that no new appropriations of underground water can be considered from the Pahrump or Manse alluvial fans.

II.

All water right applications, which are filed to appropriate additional underground water from the Pahrump Valley Hydrographic Basin are subjected to a simple analysis, which identifies the location of their proposed point of diversion within the basin. This determination is critical, since the groundwater basin has been divided into subareas, which are defined by the geologic boundaries of the Pahrump Valley and Manse alluvial fans, both of which have been closed to new appropriations of underground water since the issuance of State Engineer's Order No. 955, in 1984.

The State Engineer finds that if it is determined that the proposed point of diversion described under Application 70277 falls within the boundaries of the Pahrump Valley or Manse alluvial fans, its request for additional underground water must be denied.

III.

The records of the Office of the State Engineer contain several published geologic maps, which clearly define the boundaries of the Pahrump Valley's major alluvial fans.² The description of the proposed point of diversion found on Application 70277 and its supporting map was used to plot the location of the well site onto the appropriate geologic map. This location was found to be well within the geologic unit representing the Pahrump alluvial fan. The State Engineer finds that the proposed point of diversion described on Application 70277 is located upon the Pahrump alluvial fan, which necessitates its denial as required under State Engineer's Order No. 955.

IV.

An examination of the records of the Office of the State Engineer identified numerous water right applications that have been denied due to their proposed points of diversion being located upon the Pahrump or Manse alluvial fans. Among this group of denied applications are several, which requested new appropriations of underground water for commercial purposes.³ These applications were denied on the grounds that their approval would conflict with existing rights and be detrimental to the public interest. The State Engineer finds that previous water right applications to appropriate underground water for commercial purposes from the Pahrump or Manse alluvial fan have been denied.

V.

The State Engineer is authorized to deny a water right application prior to publication in the appropriate newspaper, in those instances where a previous application for a similar manner

² Malmberg, G.T., 1967, Hydrology of the Valley Fill and Carbonate Rock Reservoirs, Pahrump Valley Nevada-California: USGS Water Supply Paper 1832, 1:125,000

³ See State Engineer's Ruling Nos. 2836, 3248, 3462, 3486, 3505, 3809, 3941, 4239, 5269 and 5280 official records in the Office of the State Engineer.

of use within the same groundwater basin has been rejected.⁴ The State Engineer finds that this provision of the Nevada Revised Statutes can be applied to Application 70277; therefore, its consideration for denial can proceed without the necessity of the statutory publication period.

VI.

The filing of a water right application, which requests a new appropriation of water, requires the payment of a \$250.00 application fee. Should an application be denied prior to publication, the unused publication fee of \$50.00 is remitted to the party who paid the application filing fee. The State Engineer finds that if Application 70277 is denied prior to publication, a portion of the original application filing fee, represented by the \$50.00 publication fee will be remitted.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- 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 from the Pahrump alluvial fan are to be denied

⁴ NRS 533.370(4).

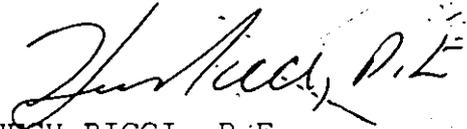
⁵ NRS chapters 533 and 534.

in accordance with State Engineer's Order No. 955. The State Engineer concludes that to approve Application 70277 would violate the provisions of State Engineer's Order No. 955 and would threaten to prove detrimental to the public interest.

RULING

Application 70277 is hereby denied on the grounds that its approval would violate State Engineer's Order No. 955 and would threaten to prove detrimental to the public interest. This denial is made prior to the statutory publication period; therefore, the \$50.00 publication fee will be remitted to the party who submitted the original application fee.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MB/jm

Dated this 15th day of
April, 2004.