

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

IN THE MATTER OF APPLICATIONS)
54070, 54071 AND 54072 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN)
THE LAS VEGAS ARTESIAN BASIN (212),)
CLARK COUNTY, NEVADA.)

RULING
5994

GENERAL

I.

Application 54070 was filed on October 17, 1989, by the Las Vegas Valley Water District, and later assigned to the Southern Nevada Water Authority, to appropriate 10.0 cubic feet per second (cfs) of underground water from the Las Vegas Artesian Basin. The proposed manner and place of use is described as municipal and domestic purposes within Clark, Lincoln, Nye and White Pine Counties. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, T.16S., R.58E., M.D.B.&M.¹

II.

Application 54071 was filed on October 17, 1989, by the Las Vegas Valley Water District, and later assigned to the Southern Nevada Water Authority, to appropriate 10.0 cfs of underground water from the Las Vegas Artesian Basin. The proposed manner and place of use is described as municipal and domestic purposes within Clark, Lincoln, Nye and White Pine Counties. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, T.16S., R.58E., M.D.B.&M.²

III.

Application 54072 was filed on October 17, 1989, by the Las Vegas Valley Water District, and later assigned to the Southern Nevada Water Authority, to appropriate 10.0 cfs of underground water from the Las Vegas Artesian Basin. The proposed manner and place of use is described as municipal and domestic purposes within Clark, Lincoln, Nye and White Pine Counties. The

¹ File No. 54070, official records in the Office of the State Engineer.

² File No. 54071, official records in the Office of the State Engineer.

proposed point of diversion is described as being located within the NE¼ NE¼ of Section 15, T.15S., R.59E., M.D.B.&M.³

IV.

Applications 54070, 54071, and 54072, were timely protested by the County of Inyo, California, the City of Caliente, the Toiyabe Chapter of the Sierra Club, the Ely Shoshone Tribe (54072 only), the Moapa Band of Paiute Indians, the County of White Pine and the City of Ely, the U.S. Department of Interior, Fish and Wildlife Service, the County of Nye, the Sheep Mountain Homeowners Association (54072 only), the U.S. Department of Interior, National Park Service, and the unincorporated Town of Pahrump on grounds not to be considered in this ruling.^{1,2,3}

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

II.

The State Engineer finds that Applications 54070, 54071 and 54072 have proposed points of diversion that are located within the hydrologic boundaries of the designated Las Vegas Artesian Basin (LVAB).

III.

Applications 54070, 54071 and 54072 request appropriations totaling 30.0 cfs of ground water, which converts to about 21,700 acre-feet annually. The proposed ground-water appropriations are within the LVAB, which is one of Nevada's most heavily regulated ground-water basins. 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

³ File No. 54072, official records in the Office of the State Engineer.

provision of the NRS to the LVAB is evidenced by a series of orders handed down by the State Engineer:⁴

Order No. 175 was signed by the State Engineer on January 10, 1941, designating a portion of the LVAB.

Order No. 182 was signed by the State Engineer on February 28, 1944, extending the designated portion of the LVAB.

Order No. 189 was signed by the State Engineer on November 22, 1946, extending the designated portion of the LVAB.

Order No. 196 was signed by the State Engineer on December 1, 1949, curtailing irrigation use in the LVAB.

Order No. 212 was signed by the State Engineer on November 20, 1953, regulating quasi-municipal allocations in the LVAB.

The 1955 Nevada State Legislature enacted Senate Bill No. 104, which allowed the State Engineer to issue temporary permits to appropriate ground water, which may be revoked when water service can be furnished by an entity such as a water district or a municipality engaged in furnishing water.

Order No. 249 was signed by the State Engineer on April 18, 1961, extending the designated portion of the LVAB.

Order No. 275 was signed by the State Engineer on May 25, 1964, extending the designated portion of the LVAB.

Order No. 833 was signed by the State Engineer on December 27, 1983, whereby the remaining portion of the LVAB was designated and all applications filed to appropriate underground water to irrigate land within the designated LVAB will be denied.

Order No. 1021 was signed by the State Engineer on March 2, 1990, limiting the appropriations to a maximum of 4,000 gallons per day for all uses in the LVAB.

Order No. 1054 was signed by the State Engineer on March 23, 1992, stating that as of the date of the Order, applications filed to appropriate ground water pursuant to NRS § 534.120 within the designated LVAB will be denied.

Amended Order No. 1054 was signed by the State Engineer on April 15, 1992, adding three exceptions to the original order. Exception No. 3 specifies that applications filed before March 23, 1992, will be processed according to NRS chapter 533.

⁴ Official records in the Office of the State Engineer.

The State Engineer finds that new appropriations of underground water from the LVAB have been gradually regulated to a point where only those water right applications, which comply with the exceptions defined within State Engineer's Amended Order No. 1054 can be considered for approval. The State Engineer finds that Applications 54070, 54071 and 54072 were filed on October 17, 1989; therefore, the applications are not subject to denial under Amended Order No. 1054 and the applications will be processed according to NRS chapter 533. The State Engineer further finds that no new ground-water appropriation requests in the form of non-revocable permits have been issued in the LVAB since 1955 for quasi-municipal and municipal purposes.

IV.

Many of the activities that are allowed under a quasi-municipal use are also permitted under a municipal water right. Both manners of use can be used, for example, to support residential development within the LVAB, ranging from individual parcels to large subdivisions. A review of State Engineers' past denials identifies numerous instances where additional appropriations of underground water for quasi-municipal use have been denied. Many of these denials were based upon issues relating to unappropriated underground water, potential conflicts with existing ground-water rights and land subsidence.⁵ It must be noted that in accordance with State Engineer's Amended Order No. 1054, at this point in time, a new request for additional underground water for either quasi-municipal or municipal purposes would be denied by the State Engineer.

The State Engineer finds that water right applications that have requested a manner of use similar to Applications 54070, 54071 and 54072 have been previously denied within the LVAB. The State Engineer finds that when a previous application for a comparable use of water within the same hydrologic ground-water basin has been rejected on the grounds that there is no unappropriated water or when its proposed use would conflict with existing rights or would threaten to prove detrimental to the public interest, the new applications may be similarly denied.

⁵ Nevada Division of Water Resources Water Right's Database, Ruling Query Results Hydrographic Basin 212, official records in the Office of the State Engineer.

V.

The perennial yield of a ground-water reservoir may be defined as the maximum amount of ground water that can be salvaged each year over the long term without depleting the ground-water reservoir. Perennial yield is ultimately limited to the maximum amount of natural discharge that can be salvaged for beneficial use. The perennial yield cannot be more than the natural recharge to a ground-water basin and in some cases is less. If the perennial yield is exceeded, ground-water levels will decline and steady-state conditions will not be achieved. Additionally, withdrawals of ground water in excess of the perennial yield may contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased economic pumping lifts, and land subsidence.⁶

The estimated perennial yield of the LVAB is 25,000 acre-feet annually.⁷ A review of the 2007 water usage report shows the committed ground-water resources for the LVAB to be 86,799 acre-feet annually.⁸ Of this, 68,054 acre-feet are revocable; 8,044 acre-feet are environmental control and 358 acre-feet are rights for the shallow aquifer. For the 2007 calendar year, 71,768 acre-feet of ground water were pumped from the LVAB.

The State Engineer finds that a substantial basin-wide overdraft on the ground-water reservoir exists in the LVAB as the net pumping draft continues to exceed the perennial yield.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁹

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁰

⁶ Office of the State Engineer, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p. 13, Oct. 1971.

⁷ P. A. Domenico, D. A. Stephenson, and G. B. Maxey, *Ground Water in Las Vegas Valley*, Water Resources Bulletin No. 29, (Desert Research Institute, University of Nevada in cooperation with the State of Nevada Department of Conservation and Natural Resources), pp. 22 and 25, (1964).

⁸ Nevada Division of Water Resources, *Las Vegas Valley Water Usage Report, 2007*, official records in the Office of the State Engineer.

⁹ NRS chapters 533 and 534.

¹⁰ NRS § 533.370(5).

- 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.

The State Engineer concludes that previous applications have been denied for similar uses in the LVAB; therefore, Applications 54070, 54071 and 54072 can be considered for denial.

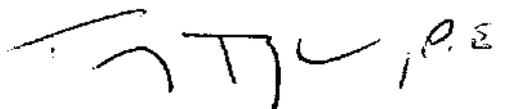
IV.

Applications 54070, 54071 and 54072 request the appropriation of 30.0 cfs of underground water for municipal purposes from the LVAB where there is no water remaining to be appropriated. The State Engineer concludes that granting of these new appropriations would further aggravate the basin-wide overdraft, and therefore, would conflict with existing rights and threaten to prove detrimental to the public interest.

RULING

Applications 54070, 54071 and 54072 are hereby denied on the grounds that their approval would conflict with existing water rights and threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 13th day of
July, 2009.