

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

IN THE MATTER OF APPLICATION 64172)
FILED TO CHANGE THE POINT OF DIVERSION,)
AND PLACE OF USE OF A PORTION OF THE)
PUBLIC WATERS OF AN UNDERGROUND SOURCE)
PREVIOUSLY APPROPRIATED UNDER PERMIT)
61063 WITHIN THE LAS VEGAS ARTESIAN)
GROUNDWATER BASIN (212), CLARK COUNTY,)
NEVADA.)

RULING

5118

GENERAL

I.

Application 64172 was filed on May 29, 1998, by Craig O. and Sonja R. Brooksby to change the point of diversion and place of use of 4.0 acre-feet annually (afa), a portion of the underground waters previously appropriated under Permit 61063. The manner of use is quasi-municipal and domestic purposes within the W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T.19S., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 30.¹

II.

Permit 61063 was granted July 27, 1995, for 5.0 afa for quasi-municipal purposes in the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, T.19S., R.60E., M.D.B. & M.² Title to the permit is in the name of Craig O. and Sonja R. Brooksby. The point of diversion of Permit 61063 is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 29. The place of use is also described by Clark County Assessor's Parcel Numbers (APN) 125-29-101-034, 125-29-101-035, 125-29-101-036, and 125-29-101-037. The Assessor's Parcel Map indicates that the four parcels were created by Parcel Map Division PM 83-17.

¹ File No. 64172, official records in the Office of the State Engineer.

² File No. 61063, official records in the Office of the State Engineer.

III.

Permit 65450 was granted on April 5, 2000, for 0.1 cfs, not to exceed 4.48 afa for quasi-municipal service to four parcels under the provisions of State Engineer's Amended Order No. 1054 for replacement of cancelled Permit 57515.³ Title to Permit 65450 is in the name of Silent Brook Estates Well Assoc. The point of diversion of Permit 65450 is the same well as that of Permit 61063, but the places of use of the two permits are separate and adjacent. The place of use of Permit 65450 is described as being within the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, T.19S., R.60E., M.D.B.&M., described by Clark County Assessor's Parcel Numbers (APN) 125-29-101-030, 125-29-101-031, 125-29-101-032, and 125-29-101-033. The Assessor's Parcel Map indicates that the four parcels were created by Parcel Map division PM 83-18.

FINDINGS OF FACT

I.

The State Engineer granted Permit 61063 for 5.0 afa to provide water service to four lots within the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, T.19S., R.60E., M.D.B.&M. The minimal duty for housing units in the Las Vegas Artesian Basin is 1,000 gallons per day per unit, or 1.12 afa per unit. The State Engineer finds that he will allow a duty of 1.0 afa per unit, and finds that he approved a change application for 1.0 afa to a new place of use under Permit 61478, leaving 4.0 afa or 1.0 afa per unit, for the four parcels within the place of use of Permit 61063.

II.

Application 64172 proposes to change 4.0 afa to a new place of use different from the place of use under Permit 61063. The State Engineer may allow such a change if water service can be provided from another source, such as the Las Vegas Valley Water District, to the place of use under Permit 61063. The State

³ File No. 65450, official records in the Office of the State Engineer.

Engineer finds that Permit 61063 still provides water service to the four lots, and that water service from a Las Vegas Valley Water District water main is approximately 1,600 feet away.⁴ The State Engineer finds that to approve a permit under Application 64172 would allow a duty of 4.0 afa under that permit at the same time that 4.0 afa is still being used under Permit 61063. The State Engineer finds that this will result in an expansion of the water right from 4.0 to 8.0 acre-feet annually.

III.

The State Engineer initially described and designated a portion of the Las Vegas Artesian Basin on January 10, 1941, under the provisions of NRS § 534.030, as a basin in need of additional administration.⁵ The State Engineer subsequently extended the boundaries of the designated area of the Las Vegas Artesian Basin on February 29, 1944,⁶ November 22, 1946,⁷ April 18, 1961,⁸ May 25, 1964,⁹ and December 27, 1983.¹⁰

Pursuant to State Engineer's Amended Order No. 1054,¹¹ all applications filed after March 23, 1992, requesting the use of water from the Las Vegas Artesian Basin would be denied with a few exceptions. The State Engineer finds to grant a permit under Application 64172 which would allow for an expansion of a water

⁴ Field Investigation dated January 4, 2000, and Parcel Map in File No. 65450, official records in the Office of the State Engineer.

⁵ State Engineer's Order No. 175, dated January 10, 1941, official records in the Office of the State Engineer.

⁶ State Engineer's Order No. 182, dated February 29, 1944, official records in the Office of the State Engineer.

⁷ State Engineer's Order No. 189, dated November 22, 1946, official records in the Office of the State Engineer.

⁸ State Engineer's Order No. 249, dated April 18, 1961, official records in the Office of the State Engineer.

⁹ State Engineer's Order No. 275, dated May 25, 1964, official records in the Office of the State Engineer.

¹⁰ State Engineer's Order No. 833, dated December 27, 1983, official records in the Office of the State Engineer.

¹¹ State Engineer's Amended Order No. 1054, dated April 15, 1992, official records in the Office of the State Engineer.

right would be in direct contravention of the State Engineer's Amended Order No. 1054 which would not allow a permit to be granted for the purposes applied for here and would conflict with existing rights and threaten to prove detrimental to the public interest.

IV.

By letter dated August 23, 1999, the State Engineer requested the applicants provide him with information as to how water service was to continue to the four lots within the place of use of Permit 61063 if the applicants were intending to move the water right off those lots pursuant to any permit granted under Application 64172.¹ The State Engineer finds that the applicant's response, dated December 7, 1999, stated his problems with the four lot owners and did not give any proposal for providing water service to the four lots within the place of use Permit 61063 except for having the four lot owners extend the Las Vegas Valley Water District water main and connect for water service, thereby stopping use under Permit of Permit 61063 and allowing approval of Application 64172.¹

V.

The State Engineer finds that the water use under Permit 61063 and 65450 for the calendar years 2000 and 2001 was 14.2¹² and 15.6¹³ acre-feet, respectively. The water use for these two years exceeds the total amount of water permitted, 8.48 acre-feet, under Permits 61063 and 65450.

¹² Division of Water Resurces, Las Vegas Water Usage Report, 2000 page 106.

¹³ Division of Water Resurces, preliminary data for Las Vegas Water Usage Report 2001, File No. 61063, 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.¹⁴

II.

The State Engineer is prohibited by law from granting an application to change the public waters where:¹⁵

- A. the proposed use or change conflicts with existing rights;
- B. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- C. the proposed use or change threatens to prove detrimental to the public interest.

III.

An application may be filed to change the point of diversion, manner or place of use of water already appropriated.¹⁶ Water already appropriated, in reference to a change application, refers to water represented by a water right permit or certificate in good standing.¹⁷ A water right cannot be used to support a change application unless a corresponding water use under the supporting water right permit ceases simultaneously with the water rights transferring and becoming appurtenant to another place of use.¹⁸

The State Engineer concludes that water use under the base right is tied to the approval of the four lots under Permit 61063 and cannot be removed until all four lots can be provided water service from another source. The State Engineer concludes that

¹⁴ NRS § chapters 533 and 534.

¹⁵ NRS § 533.370(3).

¹⁶ NRS § 533.325.

¹⁷ NRS § 533.324.

¹⁸ NRS § 533.040(2).

Ruling
Page 6

Application 64172 must be denied because to issue a permit would be an expansion of the water right which would in effect be a new appropriation of water thereby conflicting with existing rights and threatening to prove detrimental to the public interest.

RULING

Application 64172 is hereby denied on the grounds that such use would conflict with existing rights and threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/CB/jm

Dated this 23rd day of
April, 2002.