

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

IN THE MATTER OF APPLICATIONS )  
56539, 56540 AND 56541 FILED TO )  
APPROPRIATE THE PUBLIC WATERS )  
FROM UNDERGROUND SOURCES WITHIN )  
THE BEDELL FLAT HYDROGRAPHIC )  
BASIN (94), AND ANTELOPE VALLEY )  
HYDROGRAPHIC BASINS (93), WASHOE )  
COUNTY, NEVADA. )

RULING

# 5249

GENERAL

I.

Application 56539 was filed on July 16, 1991, by Red Rock Estates, Inc., to appropriate 2.0 cubic feet per second (cfs), to serve a 900-unit subdivision, from an underground water source for quasi-municipal and domestic purposes within portions of Section 5 and 6, T.21N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 26, T.22N., R.19E., M.D.B.&M.<sup>1</sup>

II.

Application 56540 was filed on July 16, 1991, by Red Rock Estates, Inc., to appropriate 2.0 cfs, to serve a 900-unit subdivision, from an underground water source for quasi-municipal and domestic purposes within portions of Section 5 and 6, T.21N., R.19E., 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 Section 26, T.22N., R.19E., M.D.B.&M.<sup>2</sup>

III.

Application 56541 was filed on July 16, 1991, by Red Rock Estates, Inc., to appropriate 2.5 cfs, to serve a 900-unit subdivision, from an underground water source for quasi-municipal and domestic purposes within portions of Sections 5 and 6, T.21N.,

<sup>1</sup> File No. 56539, official records in the Office of the State Engineer.

<sup>2</sup> File No. 56540, official records in the Office of the State Engineer.

R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 9, T.23N., R.19E., M.D.B.&M.<sup>3</sup>

**IV.**

Applications 56539, 56540 and 56541 propose to import water into the Lemmon Valley (92A) Hydrographic Basin. The proposed points of diversion under Applications 56539 and 56540 are in the Antelope Valley Hydrographic Basin (93). The proposed point of diversion under Application 56541 is in the Bedell Flat Hydrographic Basin (94).

**V.**

Subsequent to the filings of Applications 56539, 56540 and 56541, a letter was received on December 9, 2002, by the Office of the State Engineer redirecting the proposed amount of water to be used by Application 56541 for the project from a 900-unit subdivision to a 369-unit subdivision.<sup>3</sup>

**VI.**

Applications 56539 and 56540 were timely protested by Washoe County on the following grounds:<sup>1,2</sup>

1. Application 50202 was filed by Washoe County for the appropriation of remaining available groundwater resources in the Antelope Flat Hydrographic Basin.
2. Application 50202 was filed earlier in priority than Applications 56539 and 56540.
3. Approval of the subject applications would reduce the amount of water available for appropriation by Washoe County.

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<sup>3</sup> File No. 56541, official records in the Office of the State Engineer.

The protestant requested the State Engineer deny the subject applications.

**VII.**

Application 56541 was timely protested by Washoe County on the following grounds:<sup>3</sup>

1. Application 50201 was filed by Washoe County for the appropriation of remaining available groundwater resources in Bedell Flat Hydrographic Basin.
2. Application 50201 was filed earlier in priority than Application 56541.
3. Approval of the subject application would reduce the amount of water available for appropriation by Washoe County.

The protestant requested the State Engineer deny the subject applications.

**FINDINGS OF FACT**

**I.**

State Engineer's Ruling No. 4599 dated January 26, 1998, denied Applications 50201 and 50202.<sup>4</sup> The State Engineer finds that the grounds of the protest as to Washoe County having senior applications no longer warrant consideration because the applications have been denied.

**II.**

On December 4, 2002, James Stewart of Red Rock Estates, Inc., sent the State Engineer, a letter as to his intent to subdivide his 123 acres of land into 1/3-acre parcels.<sup>5</sup> Under his

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<sup>4</sup> File No. 50201 and 50202, official records in the Office of the State Engineer.

<sup>5</sup> File No. 56541, official records in the Office of the State Engineer. See letter dated December 4, 2002, from James G. Stewart to Hugh Ricci, filed within.

development plan, this area was to be divided into approximately 369 individual parcels. The State Engineer finds that the development plan described in Mr. Stewart's letter has not been submitted to the Office of the State Engineer.

### III.

The proposed lots described within the place of use currently are zoned by Washoe County as General Rural Regulatory Zone.<sup>6</sup> Section 110.106.110 of the Washoe County Development Code for General Rural states that any proposed development of land within this zoning classification will be: (1) remote and will have no or very low density development (i.e. 1 dwelling unit per 40 acres).<sup>7</sup> The Land Use Summary handout obtained from the Washoe County Department of Community Development shows the minimum lot size for General Rural at 40 acres. The State Engineer finds current-zoning restrictions established and enforced by Washoe County prohibit the creation of 1/3-acre lots within the subject place of use. The Washoe County Assessors Office confirmed that James Stewart owns 123 acres of land within Sections 5 and 6, T.21N., R.19E.<sup>8</sup> The six (6) parcels for 123 acres range in size from 1.66 to 37.99 acres. Subdividing these parcels smaller than their current size is restricted by Washoe County.

### IV.

The Washoe County Planning Office on February 6, 2003 provided the Office of the State Engineer the current zoning changes between the City of Reno and Washoe County.<sup>9</sup> The State Engineer finds that no parcels associated with this project are being considered for annexation into the City of Reno.

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<sup>6</sup> File No. 56541, official records in the Office of the State Engineer. See memo to file dated January 27, 2003.

<sup>7</sup> File No. 56541, official records in the Office of the State Engineer. See Washoe County Development Code, Regulatory Zones, January 11, 2000, Page 106-9. Received in the Office of the State Engineer on January 27, 2003.

<sup>8</sup> File No. 56541, official records in the Office of the State Engineer. See Memo to file dated January 29, 2003.

<sup>9</sup> File No. 56541, official records in the Office of the State Engineer. See Memo to file dated February 6, 2003.

V.

By letter dated December 4, 2002, Red Rock Estates Inc., informed the State Engineer that the "approved" tentative map had expired.<sup>10</sup> Records show the tentative map filed in 1980 never had any lots approved under a final subdivision by the State Engineer's Office. The permits supporting the tentative map under 30274, 30275, 31122 and 31726 were cancelled.<sup>11</sup> Portions of Permits 30274, 30275 and 31122 for Red Rock Estates were cancelled on May 9, 1989. The Red Rock Estates portions under Permit 31726 were cancelled on August 15, 1989. No new tentative map is on file with the Office of the State Engineer.

The State Engineer finds that current Washoe County zoning restrictions prevent additional parcels from being created within the proposed place of use. Those parcels now existing can be provided water service through the use of one domestic well per parcel.

VI.

Applications 56539, 56540 and 56541 were filed to provide quasi-municipal water for a proposed 900-unit subdivision and subsequently under a proposed 369-unit subdivision, which is precluded under current Washoe County Zoning restrictions from development. The State Engineer finds that the approval of water right permits for a project, which is not feasible, would threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>12</sup>

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<sup>10</sup> File No. 56541, official records in the Office of the State Engineer. See Letter from Red Rock Estates Inc. to the State Engineer on December 4, 2002.

<sup>11</sup> File No. 30274, 30275, 31122 and 31726, official records in the Office of the State Engineer.

<sup>12</sup> NRS chapters 533 and 534.

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>13</sup>

- 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.

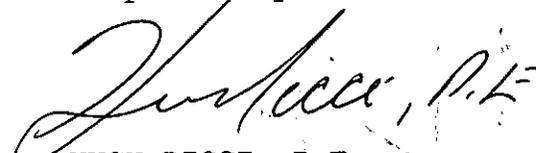
**III.**

Applications 56539, 56540 and 56541 request new appropriations of underground water for a 369-unit subdivision that cannot occur under existing county zoning and land use restrictions. The State Engineer concludes that the approval of water right permits to support a project without viability would threaten to prove detrimental to the public interest.

**RULING**

Applications 56539, 56540 and 56541 are hereby denied on the grounds that the approval of water right permits for a project, which is not valid, would threaten to prove detrimental to the public interest. Washoe County's protest is overruled.

Respectfully submitted,

  
HUGH RICCI, P.E.  
State Engineer

HR/TCPj/jm

Dated this 29th day of  
May, 2003.

<sup>13</sup> NRS § 533.370(3).