

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

IN THE MATTER OF APPLICATION 70516)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE PAHRUMP VALLEY)
HYDROGRAPHIC BASIN (162), NYE)
COUNTY, NEVADA.)

RULING

#5379

GENERAL

I.

Application 70516 was filed on October 17, 2003, by DM Robinette to appropriate 0.00279 cubic feet per second of underground water from the Pahrump Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal and domestic purposes within a place of use that is simply and incorrectly stated as, Lot 1 of Rancho View Estates. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 2, T.21S., R.53E., M.D.B.&M. The proposed manner of use is more specifically described within the remarks section of the application as water service to four existing residential units.¹

II.

The groundwater basin, which is the subject of this ruling, has been referred to in the records of the Office of the State Engineer as the Pahrump Valley groundwater, the Pahrump Valley Artesian Basin and the Pahrump Valley Hydrographic Basin. For the purpose of this ruling, it is assumed that they all refer to groundwater basin No. 162, as depicted on the State Engineer's Designated Groundwater Basins of Nevada Map.

FINDINGS OF FACT

I.

Nevada Revised Statutes (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

¹ File No.70516, official records in the Office of the State Engineer.

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 implementation 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. This initial order described and designated a portion of the Pahrump Valley Hydrographic Basin as a groundwater basin in need of additional administration.² The boundaries of the Pahrump Valley Artesian 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. 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 Order No. 955, to include all applications located on the Pahrump and Manse alluvial fans. This order also classified new appropriations of 5,000 gallons per day or less for commercial purposes, from points off the fan, a preferred use of underground water. The State Engineer's most recent action to limit new appropriations of underground water was taken with the issuance of Order No. 1107 on November 8, 1994. This order stated that any water right applications that requested new appropriations of underground water from the Pahrump Valley Hydrographic Basin would be denied with the following exceptions:

1. Those applications filed for commercial (non-living units) or industrial purposes off the fan and only those applications, which seek to appropriate 1,800

² All of the State Engineer's Orders referenced within this ruling have been indexed, by their respective order number into the appropriate Order Book, an original set of which is contained within the official records of the Office of the State Engineer.

gallons per day or less, and where the property zoned for such purpose shall be processed and subject to NRS 533 AND 534.

2. Those applications for Environmental permits filed pursuant to NRS 533.437.

The State Engineer finds that new appropriations of underground water from the Pahrump Valley Hydrographic Basin have been gradually regulated to a point where only those water right applications that comply with the exceptions defined within State Engineer's Order No. 1107 can be considered for approval.

II.

State Engineer's Order No. 1107 represents the latest set of formal restrictions applied to additional requests of underground water from the Pahrump Valley Hydrographic Basin. Under this order, the manner of use requested under Application 70516 cannot be considered for approval. The State Engineer finds that the applicant's request to appropriate underground water to service four existing residences must be rejected and that other remedies must be found to secure a supply of water for these residential units.

III.

The State Engineer has denied applications that requested permanent appropriations of underground water for quasi-municipal purposes within the Pahrump Valley Hydrographic Basin since 1972. Many of these denials were based on the grounds that withdrawals of additional groundwater from the basin would interfere with and impair existing water rights and would prove to be detrimental to the public interest.³ The State Engineer finds that Application 70516 requests an additional appropriation of water from within the Pahrump Valley Hydrographic Basin for a manner of use that has previously been denied by the State Engineer.

³ SEE, State Engineer's Ruling Nos. 1833, 1854, 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.

IV.

When a previous application for a similar use of water within the same hydrologic groundwater 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 application may be denied without going to publication.⁴ The State Engineer finds that, based upon previous denial within the Pahrump Valley Hydrographic Basin, that Application 70516 can be denied prior to publication.

V.

Every water right application, which is submitted in its complete and correct form must be accompanied by the appropriate statutory application fee. A portion of this fee, amounting to \$50.00 is used to pay for the application's publication in the newspaper of choice. In the event that an application is denied prior to publication, the applicant or the person who paid the initial application fee is entitled to a \$50.00 remittance. The State Engineer finds that a portion of the original application fee, represented by the \$50.00 publication fee can be remitted to the appropriate party, should Application 70516 be denied.

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:⁶

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;

⁴ NRS § 533.370(4).

⁵ NRS chapters 533 and 534.

⁶ NRS § 533.370(4).

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

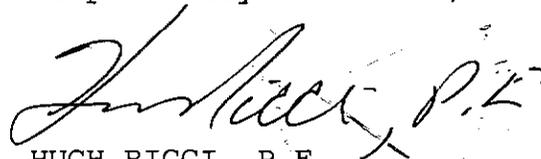
III.

Application 70516 was filed to appropriate underground water from the Pahrump Valley Hydrographic Basin. The State Engineer has denied previous applications that requested new appropriations of underground water for quasi-municipal purposes from this groundwater basin. Initially, these applications were denied on the grounds that their approval would impair existing rights and would threaten to prove detrimental to the public interest. After the issuance of State Engineer's Order No. 1107, on November 8, 1994, the issues of existing rights and public interests were included in those denials, which were derived from violations of Order No. 1107. The State Engineer concludes the approval of Application 70516 would have a similar negative effect and would violate the provisions established under State Engineer's Order No. 1107; therefore, it must also be denied.

RULING

Application 70516 is hereby denied on the grounds that its approval would violate the provisions of State Engineer's Order No. 1107.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MDB/jm

Dated this 17th day of
June, 2004.