

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

IN THE MATTER OF APPLICATION)
68201 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE MASON VALLEY)
HYDROGRAPHIC BASIN (108), LYON)
COUNTY, NEVADA.)

RULING

#5426

GENERAL

I.

Application 68201 was filed on November 15, 2001, by Pitchfork Ranch, Inc., to appropriate 6.0 cubic feet per second of underground water, not to exceed 2,200 acre feet annually. The proposed manner of use is described as being for supplemental irrigation and drought relief purposes. The proposed point of diversion is described as being located within Lot 5 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 4, T.11N., R.26E., M.D.B.&M.¹

The 1,300 acres of land that comprise the place of use are found within Lots 2, 3, 4, 5, 6, 7, 11, 12, 13, 14 and 15 of Section 4, NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, Lots 2, 7 and 9 of Section 9, W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 10, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, E $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15, all within T.11N., R.26E., M.D.B.&M., and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 31, S $\frac{1}{2}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 33, all within T.12N., R.26E., M.D.B.&M.

II.

The applicant through this application is attempting to challenge from which hydrographic basin the proposed point of diversion would divert water. In the remarks section of the application it stated that, Pitchfork Ranch, Inc. has conducted

¹ File No. 68201, official records in the Office of the State Engineer.

research to determine which hydrographic basin the ranch is located within, and based on geologic and engineering studies completed and published since the delineation of the Mason Valley Hydrographic Basin No. 108, the private lands of the Pitchfork Ranch should not have been included within the Mason Valley Hydrographic Basin, but rather the East Walker River Hydrographic Basin No. 109.

III.

Application 68201 was timely protested by Mineral County and the Walker Lake Working Group on the grounds that any new appropriation of underground or surface water in the Walker River Basin would violate the State Engineer's public trust duties, in addition to violating NRS § 533.370(3) and the Endangered Species Act. The protestants also contend that the approval of the application would detrimentally affect the economic, aesthetic and recreational interests of the residents of Mineral County.

FINDINGS OF FACT

I.

When considering a protested water right application, the State Engineer has the authority to decide whether the existing record must be supplemented with testimony and evidence derived from a public administrative hearing.² The State Engineer finds that records of the Office of the State Engineer contain sufficient information to develop a full understanding of the issues before him and that a public administrative hearing in this matter is not required.

II.

For management and water planning purposes, the United States Geological Service (USGS) and the Nevada Division of Water Resources have divided the State of Nevada into 232 discrete hydrographic basins, each of which is identified by a name and number. The boundaries of each basin, in addition to its status,

² NRS § 533.365(3).

are depicted upon the 1:750,000 Designated Groundwater Basin Map created by the Office of the State Engineer in September 2003. To maintain its accuracy, the groundwater basin map is revised on occasion to reflect additional hydrographic basin designations or the addition of new preferred uses of ground water.³ The importance of this map is demonstrated early in the water right application process, when the information contained within the application is used to plot the location of the proposed point of diversion on the designated hydrographic basin map. The groundwater's hydrographic basin is then identified and the basin name placed on the inside cover of the application file. The hydrographic basin determination is a simple but important step, since the State Engineer's regulations governing the appropriation of ground water often differs from one hydrographic basin to another. Many of the hydrographic basins in the state have attained designated status, which means the State Engineer has determined that they are in need of additional administration. The designation of a hydrographic basin allows the State Engineer, among other things, to establish preferred manners of use, commonly through orders or rulings. A number of groundwater basins, including the one within the Mason Valley Hydrographic Basin, have reached a level of regulation where new appropriations of underground water for irrigation purposes will no longer be considered.⁴ The State Engineer finds that should the applicant's case for adjusting the hydrographic basin boundary fail, Application 68201 will remain in the Mason Valley Hydrographic Basin, where it must be denied in accordance with State Engineer's Order No. 1125.

³ Designated Groundwater Basins of Nevada 1:750,000 map, September 2003, official records in the Office of the State Engineer.

⁴ State Engineer's Order No. 1125, issued February 4, 1997, official records in the Office of the State Engineer.

III.

The applicant has requested the State Engineer modify a hydrographic basin boundary line that has existed for many years. The earliest Water Resource Bulletin specific to the underground water resources of the Mason Valley was published in 1969, and the groundwater basin maps found in this report follow the State Engineer's current boundary in the area of concern.⁵ Written references to the Mason Valley Hydrographic Basin are found in the State Engineer's water application books and on the application files. Beginning in the 1950's the covers of the application files were marked to indicate the hydrographic basin with which the point of diversion is located. Those applications that were filed prior to this period were gradually updated by retroactively assigning the hydrographic basin names to their file covers. Hydrographic basin assignments are also found in the master index books, which are used to this day to record all water right applications that have been submitted since Application 2030 was filed on May 2, 1911. If these books are examined, beginning with Book 1, a subtle change can be detected in the column reserved for the hydrographic basin name. It would appear that prior to the 1950s, this column was routinely left blank, meaning that there was no effective way to determine the location of the filing relative to its groundwater basin. A solution to this problem was apparently found by the 1950s, since the hydrographic basin name was added to the index book at the same time the application number and applicants name was. As was the case with the early application files, the hydrographic basin name was eventually added to the early index books. It may be assumed that the procedure used during the 1950s to link an application with its hydrographic basin is essentially the one that is used today. If

⁵ C.J. Huxley, Jr., Water Resources and Development in Mason Valley, Lyon and Mineral Counties Nevada, 1948-1965, Nevada Department of Conservation and Natural Resources and the United States Geological Survey, Water Resource Bulletin No. 38, 1969.

true, an early version of the Mason Valley groundwater basin map may have existed during the 1950s. Even if this assumption is not entirely correct, the 1969 maps, found in the USGS Water Resource Bulletin 38, indicate that the hydrographic basin boundary has remained unchanged for the last 35 years. The State Engineer finds that the groundwater basin boundary line for the Mason Valley Hydrographic Basin has been used to assist in the administration of the groundwater basin's underground water resources for a period that exceeds 35 years and is an extremely important consideration in the regulation of water rights in the state and will not be changed without substantial independent review.

IV.

A letter dated April 2, 2004, which was received from John G. Cleary, on behalf of the applicant, provides a summary of the engineering and geologic data used to support its request for the boundary line adjustment. Most of this information is limited to Mr. Cleary's interpretation of several published geologic maps and reports, all of which are found within the records of the State Engineer. The new information referenced on the letter was limited to two sets of maps and eight cross sections of test drill holes and backhoe pits that were done by the USDA Soil Conservation Service on June 28, 1991. An evaluation of this information was performed by the staff of the State Engineer and is presented in the report titled, "Preliminary Geologic Report on the Pitchfork Ranch, Lyon County, Nevada, which has been incorporated into the record under Application 68201.¹ The general conclusion derived from this report is that there is insufficient engineering and scientific data available to make any conclusive findings that would justify amending the hydrographic basin boundary from its present location to include the Pitchfork Ranch within the East Walker Area Hydrographic Basin. The State Engineer agrees with

this conclusion and finds that the applicant's case for adjusting the Mason Valley Hydrographic Basin boundary must be rejected.

v.

The State Engineer's refusal to modify the hydrographic basin boundary line, places the proposed point of diversion and place of use within the boundaries of the Mason Valley Hydrographic Basin. It therefore must be considered a new request for underground water from this groundwater basin for drought relief and for a supplemental water right. The intent of a supplemental underground water right is to provide irrigation water during those times of the year when low flows from the river prevent the use of the primary surface water right that is appurtenant to the same acreage. This would agree with the term, drought relief that the applicant used to describe the proposed manner of use. A previous water right Application 57577 was filed by the applicant on May 1, 1992. This application was filed to appropriate 6.0 cfs, not to exceed 2,200 afa, of underground water from the Mason Valley Hydrographic Basin for supplemental emergency irrigation and drought relief purposes. By State Engineer's Ruling No. 4308, Application 57577 was denied on March 8, 1996, on the grounds that its approval would tend to conflict with existing water rights and would threaten to prove detrimental to the public interest. Due to the many similarities found between denied Application 57577 and Application 68201, the Findings of Fact and the Conclusions developed in State Engineers Ruling No. 4308 can be applied when considering Application 68201.⁶ The State Engineer finds that a previous attempt by the applicant to acquire a supplemental underground irrigation permit for drought relief purposes within the Mason Valley Hydrographic Basin was denied.

⁶ File No. 57577, 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.⁷

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁸

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

State Engineer's Order No. 1125 prohibits new appropriations of underground water from the Mason Valley Hydrographic Basin for irrigation purposes. The State Engineer concludes that the approval of Application 68201 would violate State Engineer's Order 1125 and would be contrary to the findings and conclusions upon which previous denials of irrigation applications within the Mason Valley Hydrographic Basin have been based.

IV.

The State Engineer concludes that it would not be in the public interest to approve a water right application for a manner of use that is not considered a preferred use within the Mason Valley Hydrographic Basin.

V.

The State Engineer concludes that the approval of an additional irrigation permit would conflict with the numerous

⁷ NRS chapters 533 and 534.

⁸ NRS § 533.370(4).

existing water rights that appropriate underground water from the Mason Valley Hydrographic Basin.

RULING

Application 68201 is hereby denied on the grounds that its approval would:

- A. Violate State Engineer's Order 1125
- B. Conflict with existing water rights, and
- C. Threaten to prove detrimental to the public interest.

No ruling is made on the merits of the protest.

Respectfully Submitted



HUGH RICCI, P.E.
State Engineer

HR/MB/jm

Dated this 14th day
of October 2004.