

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

IN THE MATTER OF APPLICATION 70148-T)
FILED TO CHANGE THE PLACE OF USE OF)
THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 64208)
WITHIN THE IVANPAH VALLEY-)
NORTHERN PART HYDROGRAPHIC BASIN)
(164A), CLARK COUNTY, NEVADA.)
)

RULING
#5450

GENERAL

I.

Application 70148-T was filed on June 24, 2003, by Donald M. Gadsby to change the place of use of 2.0 cubic feet per second (cfs), of the underground waters previously appropriated under Permit 64208. The proposed and existing manner of use for industrial purposes remains unchanged. The proposed and existing point of diversion remains unchanged. The proposed place of use is described as being located within the NE $\frac{1}{4}$ of Section 28 and within portions of the W $\frac{1}{2}$ of Section 34, and the E $\frac{1}{2}$ of Section 33, T.25S., R.60E., M.D.B.&M. The existing place of use is described as being located within portions of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T.26S., R.59E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T.26S., R.59E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Permit 64208 was granted on December 10, 1998, for 2.0 cfs, not to exceed 129.6 million gallons annually for industrial purposes as a temporary allowance for a finite period of time.² Permit 64208 was issued as a preferred use under the provisions of NRS § 533.371 for a specified period of time.³ The State Engineer may grant a permit for a finite time duration in fully appropriated hydrographic basins where full pumping has not occurred. Pursuant to this

¹ File No. 70148-T, official records in the Office of the State Engineer.

² File No. 64208, official records in the Office of the State Engineer.

³ NRS § 533.371.

limitation, Permit 64208 will expire on December 10, 2013. Permit 64208 specified the place of use to support a sand and aggregate wash plant project located in Ivanpah Valley-Northern Part Hydrographic Basin.² The State Engineer finds that Permit 64208 was issued for a specified finite time period for use of water at an industrial wash plant project within Section 1, T.26S., R.59E., M.D.B.&M. in Ivanpah Valley-Northern Part Hydrographic Basin.

II.

In addition to the finite issuance provision, a review of records in the Office of the State Engineer shows the State Engineer also issued Permit 64208 subject to the following limitation and condition: "This permit is issued as a preferred use and any change of the point of diversion outside of the general area of the permit will not be allowed."²

While the point of diversion and manner of use under Permit 64208 and change Application 70148-T remain the same, the proposed place of use would change from an industrial project in Ivanpah Valley-Northern Part Hydrographic Basin to an entirely different sand and gravel industrial project in Jean Lake Valley Hydrographic Basin.¹ The State Engineer finds that Permit 64208 was issued as a preferred use. The State Engineer finds that water use in a different hydrologic basin, for a different unassociated industrial project, is inconsistent with the finite issuance provision. The State Engineer finds Permit 64208 was only issued for lifetime of the specific project with an outside expiration date of December 10, 2013. If the sand and aggregate washing project allowed for under the permit terminated prior to the outside duration limit of the permit, that does not make the water available to be used for another project. The type of permit such as 64208 is a special one issued in groundwater basins where no permit would have initially been issued if only authorized appropriations were counted. To allow the permit to be changed to support other projects is outside the spirit under which the original finite period of time permit was issued, that is it was issued for the original project solely and no other.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this determination.⁴

⁴ NRS chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where: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.

Permit 64208 was issued as a preferred use for a finite period of time to support only one specific wash plant project with a point of diversion and place of use within Section 1, T.26S., R.59E., M.D.B.&M. in the Ivanpah Valley-Northern Part Hydrographic Basin. The State Engineer concludes that the use applied for under Application 70148-T is inconsistent with both the preferred use and finite issuance provision of Permit 64208. The State Engineer concludes that the proposed change requested under Application 70148-T cannot be granted because of the conditions and limitations under which Permit 64208 was issued.

RULING

Application 70148-T is hereby denied on the grounds that the proposed change in place of use conflicts with the conditions and limitations under which Permit 64208, was issued; therefore, its issuance would threaten to prove detrimental to the public interest.

Respectfully Submitted,


HUGH RICCI, P.E.
State Engineer

HR/DJL/jm

Dated this 16th day of
November, 2004.

⁵ NRS § 533.370 (4).