

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

IN THE MATTER OF APPLICATIONS)
67606, 67608 AND 67609 FILED TO)
CHANGE THE POINT OF DIVERSION,)
PLACE OF USE AND THE MANNER OF)
USE OF THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMITS 56230,)
61547 AND 56229, RESPECTIVELY,)
WITHIN THE LAS VEGAS VALLEY)
HYDROGRAPHIC BASIN (212), CLARK)
COUNTY, NEVADA.)

RULING

#5463

GENERAL

I.

Application 67606 was filed on May 24, 2001, by Blue Diamond Materials, Inc., to change the point of diversion, manner of use and place of use of 0.5 cubic feet per second (cfs), not to exceed 168.7 acre feet annually (afa), of the underground water previously permitted for appropriation under Permit 56230. The proposed manner and place of use described on the application is for industrial and domestic purposes within all of the land lying east of the Union Pacific Railroad right of way, more specifically, the SE $\frac{1}{4}$ of Section 23, and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 26, both contained within T.22S., R.60E., M.D.B.&M. The existing manner and place of use issued under Permit 56230 was for mining and milling purposes within the SE $\frac{1}{4}$ of Section 9, the E $\frac{1}{2}$ of Section 16, the W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ S $\frac{1}{4}$ of Section 15, all contained within T.22S., R.62E., M.D.B.&M. The existing point of diversion under Permit 56230 is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, T.22S., R.62E., M.D.B.&M., and the proposed point of diversion under Application 67606 is located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T.22S., R.60E., M.D.B.&M.¹

II.

Application 67608 was filed on May 24, 2001, by Blue Diamond Materials, Inc., to change the point of diversion, manner of use and place of use of 0.5 cfs, not to exceed 244.0 afa, of the underground water previously permitted for appropriation under Permit 61547. The

¹ File No. 67606, official records in the Office of the State Engineer.

proposed manner and place of use is described on the application as being for industrial and domestic purposes within all of the land lying east of the Union Pacific Railroad right of way, more specifically, the SE $\frac{1}{4}$ of Section 23, and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 26, both contained within T.22S., R.60E., M.D.B.&M. The existing manner and place of use issued under Permit 61547 was for mining and milling purposes within the SE $\frac{1}{4}$ of Section 9, the E $\frac{1}{2}$ of Section 16, the W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ S $\frac{1}{2}$ of Section 15, all contained within T.22S., R.62E., M.D.B.&M. The existing point of diversion under Permit 61547 is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, T.22S., R.62E., M.D.B.&M. and the proposed point of diversion under Application 67608 is located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T.22S., R.60E., M.D.B.&M.²

III.

Application 67609 was filed on May 24, 2001, by Blue Diamond Materials, Inc., to change the point of diversion, manner of use and place of use of 1.0 cfs, not to exceed 489.0 afa, of the underground water previously permitted for appropriation under Permit 56229. The proposed manner and place of use is described on the application as being for industrial and domestic purposes within all of the land lying east of the Union Pacific Railroad right of way, more specifically, the SE $\frac{1}{4}$ of Section 23 and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 26, both contained within T.22S., R.60E., M.D.B.&M. The existing manner and place of use issued under Permit 56229 was for mining and milling purposes within the SE $\frac{1}{4}$ of Section 9, the E $\frac{1}{2}$ of Section 16, the W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ S $\frac{1}{2}$ of Section 15, all contained within T.22S., R.62E., M.D.B.&M. The existing point of diversion of Permit 56229 is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, T.22S., R.62E., M.D.B.&M., and the proposed point of diversion under Application 67609 is within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T.22S., R.60E., M.D.B.&M.³

FINDINGS OF FACT

I.

Nevada Revised Statute § 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 Engineer in his administrative capacity is empowered to make such rules, regulations and orders

² File No. 67608, official records in the office of the State Engineer.

³ File No. 67609, official records in the office of the State Engineer.

as are deemed essential for the welfare of the area involved. The application of this provision of the NRS to the Las Vegas Valley Hydrographic Basin is evidenced in a series of orders issued by the State Engineer beginning with State Engineer's Order No. 175, which was issued on January 10, 1941.⁴ This initial order described and designated a portion of the Las Vegas Valley Hydrographic Basin as a groundwater basin in need of additional administration. The boundaries of the Las Vegas Valley Hydrographic Basin were expanded by the issuance of State Engineer's Order Nos. 182, 189, 249, 275 and 833 on February 29, 1944, November 22, 1946, April 18, 1961, May 25, 1964, and December 27, 1983, respectively.^{5,6,7,8,9} By designating the Las Vegas Valley Hydrographic Basin, the State Engineer set the stage for further restrictions relating to the appropriation of underground water from the basin.

The State Engineer finds the subject change applications are all located within the designated boundaries of the Las Vegas Valley Hydrographic Basin.

II.

During the 1940's and 1950's the development of the Las Vegas Valley was heavily reliant upon the underground and surface water resources found within the basin, and in 1946 the estimated diversion of ground water within the Las Vegas Valley first exceeded the estimated average annual recharge of water of the basin.¹⁰ But it was known that there was a considerable amount of water in groundwater storage. However, prior to the 1955 session of the legislature, the water law provided that a permit to appropriate water could only be issued when there was unappropriated water in the source.¹¹ Unappropriated water referred to water that was not withdrawn from storage, but rather was within the perennial yield of the system. Perennial yield is ultimately limited to the maximum amount of natural discharge that can be salvaged for beneficial use.¹² However, due to circumstances in the growth of Las Vegas and new water

⁴ State Engineer's Order No. 175, official records in the Office of the State Engineer.

⁵ State Engineer's Order No. 182, official records in the Office of the State Engineer.

⁶ State Engineer's Order No. 189, official records in the Office of the State Engineer.

⁷ State Engineer's Order No. 249, official records in the Office of the State Engineer.

⁸ State Engineer's Order No. 275, official records in the Office of the State Engineer.

⁹ State Engineer's Order No. 833, official records in the Office of the State Engineer.

¹⁰ State Engineer's Ruling No. 219, dated December 13, 1955, official records in the Office of the State Engineer.

¹¹ Ibid.

¹² Office of the State Engineer, Water for Nevada, State of Nevada Planning Report No. 3, Oct. 1971.

sources that would soon come on-line, the State Engineer determined that a portion of the water in storage could be placed to beneficial use without appreciable damage to the basin and existing rights, and granted permits accordingly. However, the State Engineer recognized that the appropriation of the "storage water" would not be a permanent water right as it was only a question of time until the annual quantity of water diverted from the groundwater basin would have to be reduced to the average annual recharge.¹³

In 1947, the Las Vegas Valley Water District (LVVWD) was created.¹⁴ "The primary purpose of the District was to import water from Lake Mead into the rapidly growing Las Vegas Valley to replace the over-draft on the ground-water basin and to meet additional water supply needs. It was only due to the eventual importing of Lake Mead water into the Las Vegas area that the State Engineer was able to grant temporary permits to appropriate ground-water."¹⁵

The accelerated decline of the water levels during the past few years clearly indicates that a cut back in pumping will soon be mandatory. Until such time as a network of distribution water lines can be financed and laid, the future growth in outlying areas within the Las Vegas Valley will depend upon the availability and use of ground-water. As the distribution lines are extended the temporary permit will be revoked and the holders of such permits will have to connect to the District lines.¹⁶

It was only the availability of Colorado River water for use within the Las Vegas Valley that supported the creation of the revocable permitting program under which the use of ground water to sustain development would gradually be replaced by Colorado River water provided by the LVVWD.

In order to enable the State Engineer to grant permits to appropriate ground water in such areas as the Las Vegas Valley; Section 10 of the ground-water law was amended by the 1955 legislature. In addition, the legislature added a new section, i.e., Sec. 10.5, which in part provided essentially the following:

1. In designated areas where the ground-water is being depleted, the State Engineer is empowered to make such rules,

¹³ State Engineer's Ruling No. 219.

¹⁴ Chap. 167, Stats. 1947.

¹⁵ State Engineer's Ruling No. 219.

¹⁶ Ibid.

- regulations and orders as are deemed essential for the welfare of the area.
2. To designate preferred uses and grant permits to appropriate water for such preferred uses.
 3. May issue temporary permits to appropriate ground-water, and which may be revoked when water can be furnished by an entity such as a Water District.
 4. To deny applications to appropriate ground-water for any purpose in areas served by an entity.¹⁷

Thus, under the provisions of NRS 534.120(3)(a), the State Engineer may issue temporary permits to appropriate ground water, which can be limited as to time and which may be revoked if and when water can be furnished by an entity such as a water district or a municipality engaged in furnishing water to the inhabitants thereof. The State Engineer's application of this law has been limited with a few exceptions to the Las Vegas Valley Hydrographic Basin, where revocable permits have been issued since 1955.¹⁸ If the municipal water distribution line was advanced to a point where it was feasible to service the permitted place of use, the right to appropriate underground water was revoked and replaced by municipal water service. Under the revocable program, the development of the Las Vegas Valley could continue, supported by temporary appropriations of underground water, which would eventually be revoked and replaced by out-of-basin water conveyed through the LVVWD's municipal water system.

Against this backdrop of the revocable permit system, the State Engineer continued to issue orders that limited the manners of use that water rights could be applied for in the Las Vegas Valley. This is reflected in the issuance of State Engineer's Order No. 196, dated December 1, 1949, which held that no new appropriations for irrigation would be allowed in the Las Vegas Valley Hydrographic Basin. This trend towards curtailment of new appropriations of water was continued when State Engineer's Amended Order No. 1054 was issued on April 15, 1992, which mandated, with several exceptions, that all applications requesting new appropriations of underground water from the Las Vegas Valley Hydrographic Basin would be

¹⁷ State Engineer's Ruling No. 219, dated December 13, 1955, official records in the Office of the State Engineer.

¹⁸ State Engineer's water right database, search of revocable water permits Hydrographic Basin 212, official records in the Office of the State Engineer.

denied.¹⁹ The exceptions are for applications filed for commercial and industrial purposes, which seek to appropriate 1,800 gallons per day or less and where the property is zoned for such purpose, applications filed for the purpose of reinstating a permit that has been cancelled and where some use has been made of the water, but only for the uses that are existing, and for applicants who had begun the process of filing an application before March 23, 1992.

The State Engineer finds that even though NRS § 533.120 provides for the issuance of revocable permits, subsequent orders issued by the State Engineer have limited the kinds of water rights that can be applied for under the revocable permit program. The State Engineer finds that the right to appropriate water under a revocable permit is temporary in nature and will terminate once municipal water service can be brought to the permitted place for the original holder of the permit.

III.

A water right permit is issued under a formal set of terms and conditions, which control the appropriation of water under the permit. Once established, these permit terms typically follow the water right through any abrogations, which occur through the submittal and approval of subsequent change permits. Applications 67606, 67608 and 67609 request changes in existing permits; therefore, the State Engineer finds that their approval cannot be contrary to any conditions under which the original base right permits were issued.

IV.

All of the subject applications request changes in existing permits, which were approved to change earlier permitted water rights. Any review of Applications 67606, 67608 and 67609 must also include a review of the circumstances and conditions under which any previous abrogation was approved.

Application 67606 requests a change in the manner of use, place of use and point of diversion established under Permit 56230, which was issued as a revocable water right²⁰ Permit 56230, in turn, was issued to change the manner and place of use of Permit 30070, which

¹⁹ State Engineer's Amended Order No. 1054, dated April 15, 1992, official records in the Office of the State Engineer.

²⁰ File No. 56230, official records in the Office of the State Engineer.

represents the original permit that is the base of this specific abrogation tree. This initial water right permit was approved also as a revocable permit under the provisions of NRS § 534.120.²¹

Application 67608 requests a change in the manner of use, place of use and point of diversion of the water right approved under Permit 61547. Permit 61547 was also issued as a revocable permit and was approved to change the point of diversion of a portion of revocable Permit 56229.²²

Application 67609 requests a change in the manner of use, place of use and the point of diversion of a portion of the water right approved under Permit 56229.²³ Permit 56229 was issued as a revocable permit and was approved to change the manner of use and the place of use of revocable Permit 17082.²⁴

The State Engineer finds that all three of the applications that are the subject of this ruling can be traced through a series of abrogations to base right permits, which were issued as revocable permits. The State Engineer finds that in 1990, the holder of Permit 17082 was informed that the State Engineer would consider an application to change the permit, but only if the new point of diversion remained in the general area of the existing permits.²⁵ The State Engineer finds that when Bonanza Materials, Inc. filed change Applications 52669 and 52630, information in the file for Permit 17082 indicated that change applications would not be considered for proposed places of use located outside the general area of the existing permits.

V.

Permits 17082 and 30070 were issued as revocable water right permits that were intended to be revoked upon the arrival of municipal water to the permitted place of use. Permit 17082 has a priority date of 1956 and Permit 30070 has a priority date of 1976. Once a permit has been classified as revocable, any change permits derived from it through the abrogation process will remain revocable in nature. The changes proposed under the subject applications would remove the existing points and diversions and places of use to distant locations outside of the original boundaries of the permits. This transfer would delay the revocation of the permits, since the

²¹ File No. 30070, official records in the Office of the State Engineer.

²² File No. 61547, official records in the Office of the State Engineer.

²³ File No. 67609, official records in the Office of the State Engineer.

²⁴ File No. 52669, official records in the Office of the State Engineer.

²⁵ File No. 17082, letter dated July 11, 1990, official records in the Office of the State Engineer.

municipal water line would have to be extended a greater distance. Under this scenario, the life of the revocable permits could be perpetuated, through a series of changes, made prior to the arrival of municipal water service. The State Engineer finds that the transfers proposed under the subject applications would prolong the temporary right to appropriate underground water originally granted under Permit 17082 and Permit 30070, which is contrary, to the intent of the revocable permit program and is contrary to the policy seen in State Engineer's Ruling No. 219 that revocable permits were meant to be temporary in nature. In addition, the State Engineer finds that to allow changes such as those proposed here would violate the spirit of Amended Order No. 1054 as the changes would be a method by which to obtain an appropriation of water in the groundwater basin that is not allowed under the provisions of said order.

VI.

For the revocable permitting system to be effective, limitations must be imposed upon the transfer of revocable water rights within the groundwater basin. It would be self-defeating to allow a permit, which qualifies for revocation, to be transferred to a new well site and place of use, which is beyond municipal service. By sanctioning the transfer to more distant points, the life of the temporary permit is extended, instead of being revoked and continued over pumping of the groundwater basin is perpetuated, which goes against the principle that pumping water from storage was to be a temporary measure. These permits have already had an extended life of nearly 50 and 30 years, respectively.

To prevent the continual extension of the life of temporary permits, thus, in effect making them non-revocable permits, the State Engineer's policy is that each request for transferring a revocable permit is considered on a case-by case basis with only a very few approved. At the time of this ruling, 1,325 active change permits and certificates were permitted for use within the Las Vegas Valley, of which, only 26 are identified as being changes in revocable water right permits. The majority of these changes were approved to correct discrepancies relating to well site or place of use locations. Several were allowed to transfer water rights from a problem well, to a better producing well site within the original place of use. The State Engineer finds that a small number of revocable permits have been approved for transfer on a case-by-case basis, and

that these approvals when viewed as a group do not constitute a criteria, which if met, allows revocable permits to be transferred through the change application process.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²⁶

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:²⁷

- 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 67606, 67608 and 67609 request transfers of existing revocable water rights contrary to the intent of the revocable permits originally issued, and if granted would be contrary to the provisions of Amended Order No. 1054, which only allows for very limited appropriation of water in the Las Vegas Valley. Even though these applications are filed as change applications of existing rights, said rights are revocable and were intended to be revoked and not to be extended indefinitely. To allow said rights to be continually extended is a manner in which the applicant could obtain essentially a new appropriation in the Las Vegas Valley that is not permitted under Amended Order No. 1054 or in essence changes the revocable right into a permanent right, which is not the intent behind the revocable permit system. The State Engineer concludes that the approval of the subject applications would violate the policy of the Office of the State Engineer regarding the transfer of revocable water right permits within the Las Vegas

²⁶ NRS chapters 533 and 534.

²⁷ NRS § 533.370(4).

Valley Hydrographic Basin and would violate the spirit of Amended Order No. 1054, which restricts the appropriation of ground water in the Las Vegas Valley.

IV.

The revocable permit system was created as a mechanism to reduce the amount of underground water pumped from the Las Vegas Valley Hydrographic Basin. The State Engineer concludes that this goal would not be served if the subject applications were approved, which in turn, would threaten to prove detrimental to the public interest.

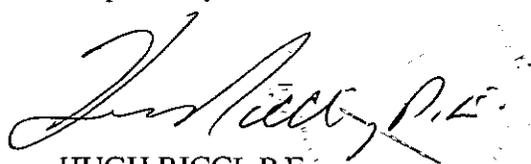
V.

The State Engineer concludes that the perpetuation of the revocable water rights through the approval of change applications would conflict with existing water rights that currently appropriate underground water from the Las Vegas Valley Hydrographic Basin and would threaten to prove detrimental to the public interest.

RULING

Applications 67606, 67608 and 67609 are hereby denied on the grounds that their approval would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MB/jm

Dated this 7th day

of December 2004.