

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

IN THE MATTER OF APPLICATION 66316,)
FILED TO CHANGE THE POINT OF)
DIVERSION, PLACE OF USE, AND MANNER)
OF USE OF THE WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY)
REQUESTED FOR APPROPRIATION UNDER)
APPLICATION 38758, WITHIN THE)
HIDDEN VALLEY HYDROGRAPHIC BASIN)
(217), CLARK COUNTY, NEVADA.)

RULING

5046

GENERAL

I.

Application 66316 was filed on April 28, 2000, by North Valley Holdings, LLC to change the point of diversion, place of use, and manner of use of 2.7 cubic feet per second, not to exceed 800.0 acre-feet annually of underground water, previously requested for appropriation under Application 38758. The proposed use is for industrial purposes within Section 2, T.18S., R.63E., M.D.B.&M., Section 7, and the W $\frac{1}{2}$ of Section 8, both within T.18S., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T.16S., R.63E., M.D.B.&M.¹

II.

Application 66316 was timely protested by John E. Hiatt, U.S. Department of Interior, National Park Service, and Dry Lake Water, LLC on various grounds.¹

FINDINGS OF FACT

I.

Application 66316 requests a change in the point of diversion, place of use, and manner of use of the underground water previously requested for appropriation under Application 38758. This earlier application represents the base right

¹ File No. 66316, official records in the Office of the State Engineer.

requested for change under Application 66316 and was denied by State Engineer's Ruling Number 5009 on April 3, 2001. The State Engineer finds that the denial of Application 38758 removes the water right application targeted for change under Application 66316.

II.

Nevada Revised Statute § 533.325 provides that an application can be filed to change the point of diversion, place of use or manner of use of water already appropriated. Water already appropriated, in reference to a change application, refers to water represented by a water right in good standing.² Where a water right application has been denied, and no permit issued, the water right no longer exists and cannot be used to support a change application. The State Engineer finds that Application 38758 cannot be used to support the changes proposed under Application 66316.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:⁴

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

² NRS § 533.324.

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(3).

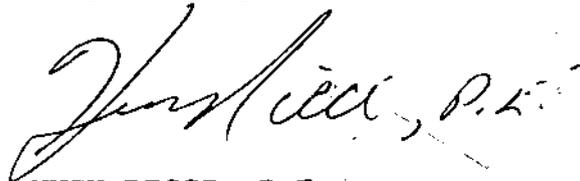
III.

Application 66316 proposes to change a water right application that was previously denied by the State Engineer. The State Engineer concludes that it would threaten to prove detrimental to the public interest to approve a change of a water right application where there is no base right to support the change application.

RULING

Application 66316 is hereby denied on the grounds that due to the denial of Application 38758, no water right application exists that can be changed by Application 66316. No ruling is made on the merits of the individual protests.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MDB/hf

Dated this 18th day of
July, 2001.