

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

IN THE MATTER OF APPLICATION 65146)
FILED TO CHANGE THE POINT OF DIVERSION,)
PLACE AND MANNER OF USE OF THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 61556 WITHIN)
THE LAS VEGAS VALLEY ARTESIAN HYDROGRAPHIC)
BASIN (212), CLARK COUNTY, NEVADA.)

RULING

5108

GENERAL

I.

Application 65146 was filed on May 27, 1999, by Craig O. Brooksby to change the point of diversion, place and manner of use of 1.0 acre-foot annually (afa) of underground water previously appropriated under Permit 61556. The manner of use is for domestic purposes within the W $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, T.19S., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 29.¹

II.

Permit 61556 was granted April 9, 1996, for 1.0 afa for quasi-municipal purposes in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T.19S., R.60E., M.D.B.&M.² The point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 30. Permit 61556 was combined with Permit 60645 and both serve as the basis for a will serve letter to provide water service of 10.0 afa to nine lots of Sterling Brook Estates, Block 2, under the State Engineer's subdivision Review No. 5403-T/F. The nine lots are also described by Clark County Assessor's Parcel Numbers (APN) 125-30-610-001 through 125-30-610-009, inclusively.

FINDINGS OF FACT

I.

The State Engineer approved Subdivision Review No. 5403-T/F with the condition that Permits 60645 and 61556 with a total duty

¹ File No. 65146, official records in the Office of the State Engineer.

² File No. 61556, official records in the Office of the State Engineer.

of 10.0 afa provide water service to the nine lot subdivision within the W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 30, T.19S., R.60E., M.D.B.& M. Generally the duty of water for housing units in the Las Vegas Valley Artesian Basin is 1000 gallons per day per unit, or 1.12 afa per unit; however, the State Engineer finds that he has allowed a duty of 1.0 afa per unit under circumstances based on a case by case basis. Subdivision Review No. 5403-T/F dated May 29, 1996 was the approval for Sterling Brook Estates, which was a nine lot subdivision using Permits 60645 and 61556 as the permits for the water supply. The body of the approval stated that the "...water service commitment allocation is based upon 893 gallons per day, or 1.0 afa, per lot."

II.

The State Engineer finds that the water use under Permits 60645 and 61556 for the calendar years 2000 and 2001 was 10.4³ and 13.0⁴ acre feet, respectively. The water use for these two years exceeds the total amount of water permitted, 10 acre feet, under Permits 60645 and 61556.

Application 65146 proposes to change 1.0 afa to a new place of use different from the place of use under Permit 61556. The State Engineer may allow such a change if water service can be provided to the subdivision from another source, such as the Las Vegas Valley Water District and the applicant can show how a reduction can be achieved. The State Engineer finds that the combined duty of Permits 60645 and 61556 is exceeded presently to provide water service to Sterling Brooks Estates, Block 2. The State Engineer finds that to approve a permit for Application 65146 would allow a duty of 1.0 afa under said permit at the same time that this 1.0 afa is still being used to serve the

³ Division of Water Resources, Las Vegas Water Usage Report, 2000 p.88

⁴ Division of Water Resources, preliminary Data for Las Vegas Water Usage Report, 2001. File No. 60645, official records in the Office of the State Engineer.

subdivision. The State Engineer finds that this would result in an expansion of water rights.

III.

The State Engineer initially described and designated a portion of the Las Vegas Artesian Basin on January 10, 1941, under the provisions of NRS § 534.030, as a basin in need of additional administration.⁵ The State Engineer subsequently extended the boundaries of the designated area of the Las Vegas Artesian Basin on February 29, 1944,⁶ November 22, 1946,⁷ April 18, 1961,⁸ May 25, 1964,⁹ and December 27, 1983.¹⁰

Pursuant to State Engineer's Amended Order No. 1054,¹¹ all applications filed after March 23, 1992, requesting the use of water from the Las Vegas Artesian Basin would be denied with a few exceptions. The State Engineer finds to grant a permit under Application 65146 which would allow for an expansion of a water right would be in direct contravention of the State Engineer's Amended Order No. 1054 which would not allow a permit to be granted for the purposes applied for here and would conflict with existing rights and threaten to prove detrimental to the public interest.

⁵ State Engineer's Order No. 175, dated January 10, 1941, official records in the Office of the State Engineer.

⁶ State Engineer's Order No. 182, dated February 29, 1944, official records in the Office of the State Engineer.

⁷ State Engineer's Order No. 189, dated November 22, 1946, official records in the Office of the State Engineer.

⁸ State Engineer's Order No. 249, dated April 18, 1961, official records in the Office of the State Engineer.

⁹ State Engineer's Order No. 275, dated May 25, 1964, official records in the Office of the State Engineer.

¹⁰ State Engineer's Order No. 833, dated December 27, 1983, official records in the Office of the State Engineer.

¹¹ State Engineer's Amended Order No. 1054, dated April 15, 1992, 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.¹²

II.

The State Engineer is prohibited by law from granting an application to change the public waters where:¹³

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

III.

An application may be filed to change the point of diversion, manner or place of use of water already appropriated.¹⁴ Water already appropriated, in reference to a change application, refers to water represented by a water right permit or certificate in good standing.¹⁵ A water right cannot be used to support a change application unless a corresponding water use under the supporting water right permit ceases simultaneously with the water right transferring and becoming appurtenant to another place of use.¹⁶

¹² NRS chapters 533 and 534.

¹³ NRS § 533.370(3).

¹⁴ NRS § 533.325.

¹⁵ NRS § 533.324.

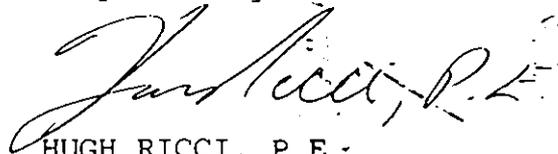
¹⁶ NRS § 533.040(2).

The State Engineer concludes that water use under the base right, Permit 61556, is tied to the approval of the nine lot subdivision under Subdivision Review 5403-T/F and cannot be removed until water service from another source can be provided. The State Engineer concludes that Application 65146 must be denied because to issue a permit would be an expansion of the water right which would in effect be a new appropriation of water thereby conflicting with existing rights and threatening to prove detrimental to the public interest.

RULING

Application 65146 is hereby denied on the grounds that such use will conflict with existing rights and threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/CB/jm

Dated this 4th day of
March, 2002.