

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

IN THE MATTER OF APPLICATION 68413 )  
FILED TO APPROPRIATE THE PUBLIC WATERS) )  
FROM AN UNDERGROUND SOURCE WITHIN THE )  
LAS VEGAS ARTESIAN HYDROGRAPHIC BASIN )  
(212); CLARK COUNTY, NEVADA. )

RULING  
# 5134

GENERAL

I.

Application 68413 was filed on January 22, 2002, by Jerry Milice to appropriate 0.1 cubic feet per second of the underground water of the Las Vegas Artesian Basin for quasi-municipal purposes within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22, T.22S., R.60E., M.D.B.&M.<sup>1</sup> The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 22. Application 68413 was filed under the provisions of State Engineer's Amended Order No. 1054<sup>2</sup> to reinstate a water right for two homes that originally had water rights under cancelled Permit 54488.<sup>3</sup>

II.

Application 68413 was timely protested by Elwood Grimes on the grounds that:

Reference Amended Order Number 1054 from the Office of the State Engineer dated April 15th 1992, last item beginning, "Now therefore" (copy enclosed) part "2" last line states: "But only for the uses that are existing". This Order makes clear that applications filed after March 23rd 1992 pursuant to N.R.S. 534.120 will be denied. The owner of the property, subject of Application #68413 has never occupied, erected [sic] a structure, irrigated, or otherwise created a circumstance which could remotely be construed as "uses

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<sup>1</sup> File No. 68413, official records of the Office of the State Engineer. Exhibit No. 1, public administrative hearing before the State Engineer, May 9, 2002. Hereinafter, the Transcript will be referred to by page number and Exhibits by Exhibit number.

<sup>2</sup> State Engineer's Amended Order No. 1054, dated April 15, 1992, official records in the Office of the State Engineer. Exhibit No. 5.

<sup>3</sup> Exhibit No. 1.

that are existing". I cannot find grounds in Title 48 or case law for approving this application.

Therefore, the protestant requested that the application be denied.<sup>4</sup>

### III.

After all parties of interest were duly noticed by certified mail, a public administrative hearing was held on May 9, 2002, before representatives of the Office of the State Engineer.<sup>5</sup>

#### FINDINGS OF FACT

##### I.

Pursuant to State Engineer's Amended Order No. 1054, all applications filed after March 23, 1992, requesting the use of ground water from the Las Vegas Artesian Basin would be denied with a few exceptions. One of those exceptions provides:

2. Applications filed for the purpose of reinstating a permit that has been cancelled and where some use has been made of the water, will be processed according to NRS Chapter 533, but only for uses that are existing.<sup>6</sup>

The protestant admitted at the administrative hearing that a mobile home was on the applicant's property in the early nineties, which was occupied.<sup>7</sup> Other evidence indicates the mobile home was there from 1991 through 1997.<sup>8</sup> The State Engineer finds that water was used under Permit 54488 through the mobile home on the Milice property, which qualifies as use of water on that parcel

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<sup>4</sup> Exhibit No. 3.

<sup>5</sup> Transcript, public administrative hearing before the State Engineer, May 9, 2002.

<sup>6</sup> Exhibit No. 5.

<sup>7</sup> Transcript, p. 7.

<sup>8</sup> Exhibit Nos. 6, 7, Transcript, p. 16.

for the reinstatement of a cancelled water right under the provisions of State Engineer's Amended Order No. 1054.

**II.**

The State Engineer finds that the water right on the Grimes portion of the property was also cancelled when Permit 54488 was cancelled and the use of water by Mr. Grimes has not been legal since that time.

**III**

Mr. Milice provided a copy of the parcel map, which appears to have been recorded by the original applicant of Permit 54488.<sup>9</sup> The parcel map indicates that four parcels existed under the place of use for Permit 54488, and indicates that the well is located on Mr. Milice's property, which is parcel 3.<sup>10</sup> That map also indicates an easement exists on Mr. Grimes property, which is parcel 4, providing access to the well for the other three original parcel holders. No evidence was provided that any use of water has ever existed on parcels 1 and 2. The State Engineer finds that Mr. Milice indicated he is applying to reinstate the water right for both his and Mr. Grimes' parcels. The State Engineer finds no water right will be reinstated for the parcels 1 and 2 under Application 68413.

**CONCLUSIONS OF LAW**

**I.**

The State Engineer has jurisdiction over the subject matter of this action and determination.<sup>11</sup>

**II.**

The State Engineer concludes that a water right can be reinstated under the provisions of State Engineer's Amended Order No. 1054 for the Grimes and Milice properties.

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<sup>9</sup> Exhibit No. 8.

<sup>10</sup> Transcript, p. 21.

<sup>11</sup> NRS chapters 533 and 534.

**III.**

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where<sup>12</sup>:

- 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.

The State Engineer concludes that granting Application 68413 under the provisions of State Engineer's Amended Order No. 1054 will not conflict with existing rights, conflict with protectible interests in existing domestic wells as set forth in NRS § 533.024, or threaten to prove detrimental to the public interest.

**RULING**

The protest to Application 68413 is hereby denied, and Application 68413 is granted subject to existing rights and the payment of statutory permit fees.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/SJT/jm

Dated this 26th day of  
June, 2002.

<sup>12</sup> NRS chapter 533.370(3).