

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

IN THE MATTER OF APPLICATIONS)
52136, 52137 AND 52138 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE SMOKE)
CREEK DESERT VALLEY HYDROGRAPHIC)
BASIN (021), WASHOE COUNTY, NEVADA.)

RULING

#5142

GENERAL

I.

Application 52136 was filed on May 26, 1988, by John Torvik, to appropriate 3.0 cubic feet per second (cfs) of underground water for irrigation of 400 acres within portions of Sections 10, 11 and 14, T.29N., R19E. M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.29N., R.19E., M.D.B.&M.¹

II.

Application 52137 was filed on May 26, 1988, by John Torvik, to appropriate 3.0 cfs of underground water for irrigation of 400 acres within portions of Sections 10, 11 and 14, T.29N., R19E., 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 Section 11, T.29N., R.19E., M.D.B.&M.² The proposed place of use is the same as described under Application 52136.

III.

Application 52138 was filed on May 26, 1988, by John Torvik, to appropriate 3.0 cfs of underground water for irrigation of 131.08 acres within a portion of Section 35, T.29N., R19E., M.D.B.&M. The proposed point of diversion is described as being

¹ File Number 52136, official records in the Office of the State Engineer.

² File Number 52137, official records in the Office of the State Engineer.

located within the SE¼ NW¼ of Section 35, T.29N., R.19E., M.D.B.&M.³

IV.

Applications 52136 through 52138, inclusive, were timely protested by Washoe County. The protest stated, "Washoe County made applications for all unappropriated water in Smoke Creek Desert. Torvik applications would interfere with County's."⁴

FINDINGS OF FACT

I.

The Smoke Creek Basin is a Non-Designated Basin. The United States Geological Survey has estimated the perennial yield of the Smoke Creek Basin to be approximately 16,000 acre-feet annually (afa).⁵ A hydrographic basin summary report by the Nevada Division of Water Resources compiled on June 27, 2002, shows approximately 6,130 afa of water rights to be appropriated within the basin.⁶ The State Engineer finds that there is unappropriated underground water at the sources.

II.

The State Engineer finds Applications 50191, 50192, 50206, 50207, 50208, 50209, 50210, 50211, 50212, 50213, 50214, 50215, 50216 and 50217 were filed by Washoe County for all the unappropriated underground water in the Smoke Creek Desert Basin and were denied January 26, 1998, under State Engineer's Ruling

³ File Number 52138, official records in the Office of the State Engineer.

⁴ File Numbers 52136, 52137 & 52138, official records in the Office of the State Engineer.

⁵ P. Glancy & F. Rush, Water Resources - Reconnaissance Series Report 44, Water-Resources Appraisal of Smoke Creek-San Emidio Desert Area, Nevada and California, Nev. Dept. of Conservation and Natural Resources & U.S.G.S., p. 46, April 1968.

⁶ Nevada Division of Water Resources Water Right Permit database, June 26, 2002, official records of the Office of the State Engineer.

No. 4599.⁷ The ruling denied these applications on the grounds that it would be detrimental to the public interest to grant permits for a project that the applicant no longer considers a viable source for municipal supply and for which the applicant has no definite plans formulated pursuant to which the waters would be put to beneficial use.

III.

Applications 52136 and 52137 were filed to irrigate a common 400 acre place of use and would be issued as supplemental permits with an annual total combined duty amounting to 1,600 acre-feet. Similarly, the approval of Application 52138 would allow an additional appropriation of 524 acre-feet. The State Engineer finds that the approval of the subject applications would add an additional 2,124 acre-feet to the committed resources of the basin but, this additional allocation would not exceed the estimated perennial yield of the basin.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁹

- 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

⁷ State Engineer's Ruling No. 4599, dated January 26, 1998, official records in the Office of the State Engineer.

⁸ NRS chapters 533 & 534

⁹ NRS § 533.370(3).

D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the basis for Washoe County's protest of Applications 52136, 52137 and 52138 has no further bearing because, Applications 50191, 50192, 50206, 50207, 50208, 50209, 50210, 50211, 50212, 50213, 50214, 50215, 50216 and 50217 filed by Washoe County for all unappropriated water in the Smoke Creek Desert Basin were denied January 26, 1998, under State Engineer's Ruling No. 4599.

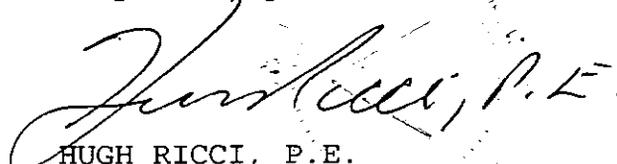
IV.

The State Engineer concludes the granting of Applications 52136 through 52138, inclusive, will not conflict with any existing rights nor threaten to prove detrimental to the public interest.

RULING

The protests to Applications 52136 through 52138, inclusive, are hereby overruled and Applications 52136 through 52138, inclusive, are granted subject to existing rights and the payment of statutory fees.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/TCPJ/jm

Dated this 22nd day of
July, 2002.