

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

IN THE MATTER OF APPLICATION)
68937 FILED TO APPROPRIATE THE)
UNDERGROUND WATERS OF THE LAS)
VEGAS ARTESIAN HYDROGRAPHIC)
BASIN (212), CLARK COUNTY,)
NEVADA.)

RULING

5148

GENERAL

I.

Application 68937 was filed on July 5, 2002, by the United States of America, Forest Service, to appropriate 0.0535 cubic feet per second of underground water from the Las Vegas Artesian Hydrographic Basin. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.19S., R.56E., M.D.B.&M. The proposed manner of use and place of use is for quasi-municipal purposes within an area that is described in general terms as multiple locations in Upper Lee Canyon. The application also provides that it is being filed to create a back up source of water to replace an inadequate flow from an existing well constructed under Permit 34824.¹

FINDINGS OF FACT

I.

Application 68937 requests an appropriation of underground water from the Las Vegas Artesian Hydrographic Basin, which is one of Nevada's most heavily regulated groundwater basins in the State of Nevada. The first issuance of a regulatory order occurred on January 10, 1941, when the State Engineer initially described and designated a portion of the Las Vegas Artesian Hydrographic Basin under the provisions of Nevada Revised Statutes chapter 534, as a

¹ File No. 68937, official records in the Office of the State Engineer.

groundwater basin in need of additional administration.² The State Engineer subsequently extended the boundaries of the designated area of the basin on February 29, 1944, November 22, 1946, April 18, 1961, May 25, 1964, and December 27, 1983.³

Pursuant to State Engineer's Amended Order No. 1054, all applications filed after March 23, 1992, requesting the use of underground water from the Las Vegas Artesian Hydrographic Basin would be denied with few exceptions, one of those exceptions being applications filed for the purpose of reinstating a permit that was cancelled, but only where some use of the water had been made and is existing.⁴

The State Engineer finds that before Application 68937 can be considered for approval it must comply with the terms of State Engineer's Amended Order No. 1054, as well as any prior orders and regulations established for the Las Vegas Artesian Hydrographic Basin.

II.

It is the applicant's contention that any permit granted under Application 68937 would merely appropriate water that the well constructed under Permit 34824 is unable to produce, thus there would not be a net increase in the amount of water permitted for appropriation under these two permits. Permit 34824 was issued for a duty of water that, under the terms of the permit, was not to exceed 1.0 million gallons annually (mga).² The State Engineer finds that the annual duty of any well proposed to be a back up source of water for Permit 34824 must be less than the annual duty issued under this permit, with any request exceeding this duty representing a new appropriation of ground water.

² State Engineer's Order No. 175, dated January 10, 1941, official records in the Office of the State Engineer.

³ State Engineer's Orders No. 182, 189, 249, 275 and 833, respectively, official records in the Office of the State Engineer.

⁴ State Engineer's Amended Order No. 1054, dated April 15, 1992, official records in the Office of the State Engineer.

III.

Application 68937 requests an appropriation of 6.0 mga of water, which exceeds the annual duty of 1.0 mga granted under Permit 34824. The State Engineer finds that the approval of Application 68937 would result in a new appropriation of underground water from the Las Vegas Artesian Hydrographic Basin in a manner which does not meet the criteria found within State Engineer's Amended Order No. 1054.

IV.

Applications that have requested new appropriations of water for quasi-municipal purposes from the Las Vegas Artesian Hydrographic Basin have been previously denied by the State Engineer.⁵ In one instance, a denial was made for an application, which sought a new appropriation of underground water from the Lee Canyon Area.⁶ This application was denied on the grounds that its approval would conflict with existing water rights and would threaten to prove detrimental to the public welfare. The State Engineer finds that Application 68937 requests an appropriation of underground water for a manner of use that has been previously denied within the Las Vegas Artesian Hydrographic Basin.

V.

If an application requests an appropriation of underground water in the same groundwater basin for a manner of use that has previously been denied by the State Engineer, the State Engineer may deny the application prior to the statutory publication

⁵ Nevada Division of Water Resources Water Right Database, Rulings Report, Basin 212, Denied Underground Quasi-Municipal Applications, August 1, 2002, official records in the Office of the State Engineer.

⁶ File No. 50827, official records in the Office of the State Engineer, see also, State Engineer's Ruling No. 3836, dated October 9, 1991, official records in the Office of the State Engineer.

period.⁷ The State Engineer finds that Application 68937 seeks an appropriation of underground water from the Las Vegas Artesian Hydrographic Basin for quasi-municipal purposes and that this manner of use has previously been denied; therefore, under the provisions of NRS § 533.370(3), Application 68937 can be denied prior to publication.

CONCLUSIONS

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

III.

Application 68937 was intended to provide the applicant with a back up source of ground water which would help mitigate the lack of production experienced at the well drilled under Permit 34824. The question as to whether Application 68937 represents a back up well whose approval would not add an additional appropriation of water from the groundwater basin is answered by comparing the amount of water requested and the annual duty of water already approved under Permit 34824. The fact that the applied for amount exceeds the permitted amount by 5.0 mga,

⁷ NRS § 533.370(3).

⁸ NRS chapters 533 and 534.

⁹ NRS § 533.370(3).

disqualifies Application 68937 as a back up source and classifies it as a new appropriation of water. Given this scenario, the State Engineer concludes that to approve an additional appropriation of underground water from the Las Vegas Artesian Hydrographic Basin as proposed under Application 68937 would be contrary to State Engineer's Amended Order No. 1054.

IV.

State Engineer's Amended Order No. 1054 prohibits all but a select group of applications to be considered for approval. The State Engineer concludes that the approval of a water right application, which does not fall within an excepted category, would threaten to prove detrimental to the public interest.

RULING

Application 68937 is hereby denied on the grounds that its approval would violate the provisions set forth within State Engineer's Amended Order No. 1054 and would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MDB/jm

Dated this 9th day of
September, 2002.