

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

IN THE MATTER OF APPLICATION 70224-T)
FILED TO CHANGE THE PLACE OF USE OF)
THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 66906,)
WITHIN THE IVANPAH VALLEY-)
NORTHERN PART HYDROGRAPHIC BASIN)
(164A), CLARK COUNTY, NEVADA.)

RULING

#5431

GENERAL

I.

Application 70224-T was filed on July 14, 2003, by Sierra Ready Mix LLC to change the place of use of 150 acre-feet annually (afa), of the underground waters previously appropriated under application to change Permit 66906. The proposed and existing manner of use for industrial purposes remains unchanged. The proposed and existing point of diversion remains unchanged. The proposed place of use is located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T.25S., R.60E., M.D.B.&M. The existing place of use is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T.26S., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 6, T.26S., R.60E., MDB&M.¹

FINDINGS OF FACT

I.

Initial Permit 65160 was granted on December 6, 1999, for 1.0 cubic feet per second (cfs), not to exceed 150 afa for industrial purposes.² Permit 65160 was issued as a preferred use under the provisions of NRS § 533.371 for a specified finite period of time.³ The State Engineer may grant a permit for a finite time duration in fully appropriated hydrographic basins where full pumping has not occurred. Application 66906 was filed on October 26, 2000, to change the point of diversion of initial existing Permit 65160. Permit 66906 was granted on November 20, 2001, for 1.0 cfs, not to exceed 150 afa for industrial purposes.⁴ Permit 66906 totally abrogated

¹ File No. 70224 - T, official records in the Office of the State Engineer.

² File No. 65160, official records in the Office of the State Engineer.

³ NRS § 533.371.

⁴ File No. 66906, official records in the Office of the State Engineer.

initial Permit 65160 and Permit 66906 was also issued as a preferred use under the provisions of NRS § 533.371 for a finite period of time.³ Pursuant to this limitation, Permit 66906 will expire on December 6, 2015, the same date originally specified under initial Permit 65160. Abrogated initial Permit 65160 and current Permit 66906 both specified the same place of use to support a construction aggregate, sand washing plant project located in Ivanpah Valley-Northern Part Hydrographic Basin.² The State Engineer finds that abrogated initial Permit 65160 and current Permit 66906 were both issued for a specified finite time period for use of water at an industrial wash plant project located within Section 6, T.26S., R.60E., MDB&M in the Ivanpah Valley-Northern Part Hydrographic Basin.

II.

In addition to the finite issuance provision, a review of records in the Office of the State Engineer shows the State Engineer also issued Permit 66906 subject to the following limitation and condition: "This permit is issued as a preferred use and any change of the point of diversion or place of use will not be allowed."²

While the point of diversion and manner of use under Permit 66906 and change Application 70224-T remain the same, the proposed place of use would change from an industrial project in Ivanpah Valley-Northern Part Hydrographic Basin to an entirely different industrial project in Jean Lake Valley Hydrographic Basin.¹ The State Engineer finds that Permit 66906 was issued as a preferred use. The State Engineer finds that water use in a different hydrologic basin, for a different unassociated industrial project, is inconsistent with both the finite issuance provision, and with the limitation disallowing a change in point of diversion or place of use of Permit 66906; therefore, Application 70224-T must be considered for denial.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this determination.⁵

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:⁶

⁵ NRS chapters 533 and 534.

⁶ NRS § 533.370(4).

- 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.

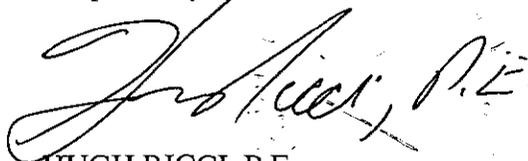
III.

Permit 66906 was issued as a preferred use for a finite period of time to support a sand washing plant project with a point of diversion and place of use within Section 6, T.26S., R.60E., MDB&M in the Ivanpah Valley-Northern Part Hydrographic Basin. Specifically, Permit 66906 was issued with a limitation that disallows a change in point of diversion and place of use, which precludes the change in place of use proposed in Application 70224-T. The State Engineer concludes that Application 70224-T is inconsistent with both the preferred use, finite issuance provision of Permit 66906, and with the limitation contained in Permit 66906 disallowing a change in point of diversion and place of use. The State Engineer concludes that the proposed change requested under Application 70224-T cannot be granted because of the specific conditions and limitations under which Permit 66906 was issued.

RULING

Application 70224-T is hereby denied on the grounds that the proposed change in place of use conflicts with the specific conditions and limitations placed on Permit 66906, which forms the basis for the change and; therefore, its issuance would threaten to prove detrimental to the public interest.

Respectfully Submitted,



HUGH RICCI, P.E.
State Engineer

HR/DJL/jm

Dated this 20th day of
October, 2004.