

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

IN THE MATTER OF APPLICATION)
76027 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE PAHRUMP VALLEY)
HYDROGRAPHIC BASIN (162), NYE)
COUNTY, NEVADA.)

RULING

#5756

GENERAL

I.

Application 76027 was filed on July 5, 2007, by Pahrump Valley Resources, LLC to appropriate 36.0 cubic feet per second, not to exceed 18,000 acre feet-annually (afa), of underground water from the Pahrump Valley Hydrographic Basin. The proposed manner of use is for municipal purposes within a place of use that is stated on the application as the Pahrump Regional Planning District. The proposed point of diversion is described as being within the NE¼ SE¼ of Section 3, T.21S., R.54E., M.D.B.&M. The description of the proposed works of diversion states that:

Large diameter well with municipal-grade turbine pump and motor, meter, possible storage tank, and distribution system as needed for municipal distribution. The well will be completed in a manner to minimize the risk of affecting the water level in the basin-fill aquifer. The basin-fill aquifer interval will be sealed, so there will be no water production from the upper aquifer. Additionally, the production interval in the completed well will be below the top of the Carbonate Rock Aquifer.¹

FINDINGS OF FACT

I.

Nevada Revised Statutes (NRS) 534.120 provides that within an area that has been designated by the State Engineer where, in his

¹ File No. 76027, official records in the Office of the State Engineer.

judgment, the ground water basin is being depleted, the State Engineer in his administrative capacity is empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved. The application of this provision of the NRS to the Pahrump Valley Hydrographic Basin is evidenced by a series of orders handed down by the State Engineer beginning with Order No. 176, which was issued on March 11, 1941. This initial order described and designated a portion of the Pahrump Valley Hydrographic Basin as a ground water basin in need of additional administration.² The boundaries of the Pahrump Valley Artesian Basin were expanded by the issuance of State Engineer's Order Nos. 193 and 205, on January 15, 1948, and January 23, 1953, respectively.

By designating the Pahrump Valley Hydrographic Basin, the State Engineer set the stage for further restrictions relating to the appropriation of underground water from the basin. Order No. 381, issued on June 1, 1970, gave notice that no further appropriations would be approved for irrigation purposes. The denial of new applications was expanded on October 26, 1987, by Order No. 955, to include all applications located on the Pahrump and Manse alluvial fans. This order also declared new appropriations of 5,000 gallons per day or less for commercial purposes, from points off the fan, a preferred use of underground water. The State Engineer's most recent action to limit new appropriations of underground water was taken with the issuance of Order No. 1107. This order stated that any water right applications that requested new appropriations of underground water from the Pahrump Valley Hydrographic Basin would be denied with the following exceptions:

1. Those applications filed for commercial (non-living units) or industrial purposes off the fan and only those applications, which seek to appropriate 1,800

² All of the State Engineer's Orders referenced within this ruling have been indexed, by their respective order number into the appropriate Order Book, an original set of which is contained within the official records of the Office of the State Engineer.

gallons per day or less, and where the property zoned for such purpose shall be processed and subject to NRS chapters 533 and 534.

2. Those applications for Environmental permits filed pursuant to NRS § 533.437.

The State Engineer finds that new appropriations of underground water from the Pahrump Valley Hydrographic Basin have been gradually regulated to a point where only those water right applications, which comply with the exceptions defined within State Engineer's Order No. 1107, can be considered for approval.

II.

State Engineer's Order No. 1107 represents the latest set of formal restrictions applied to new requests for additional underground water from the Pahrump Valley Hydrographic Basin. Under this order, the manner of use requested under Application 76027 cannot be considered for approval. The State Engineer finds that the Applicant's request to appropriate underground water must be rejected.

III.

Many of the activities that are allowed under a quasi-municipal use are also permitted under a municipal water right. Both manners of use can be used to support residential development within the Pahrump Valley, ranging from individual parcels to large subdivisions. Quasi-municipal and municipal permits have been issued for use within the Pahrump Valley for annual duties of less than 1.0 acre-foot to more than 1,300 acre feet.³

A review of State Engineers' past denials, identifies numerous instances where additional appropriations of underground water for quasi-municipal use have been denied. Many of these denials were based upon issues relating to unappropriated underground water and potential conflicts with existing water rights. Expanding this search to municipal applications produced

³ Nevada Division of Water Resources water right database, Special Hydrographic Abstract, Hydrographic Basin 162, July 16, 2007, official records in the Office of the State Engineer.

a smaller group of denials, none of which stemmed from water availability or concerns over existing rights.⁴ It must be noted that in accordance with State Engineer's Order No. 1107, at this point in time, a new request for additional underground water for either quasi-municipal or municipal purposes would be denied by the State Engineer.

The State Engineer finds that water right applications that have requested a manner of use that is similar to that proposed under Application 76027 have been previously denied within the Pahrump Valley Hydrographic Basin.

IV.

When a previous application for a similar use of water within the same hydrologic groundwater basin has been rejected on the grounds that there is no unappropriated water or when its proposed use would conflict with existing rights or would threaten to prove detrimental to the public interest, the new application may be denied without going to publication.⁵ The State Engineer finds that Application 76027 can be denied prior to publication.

V.

Every water right application, which is submitted in its complete and correct form, must be accompanied by the appropriate statutory application fee. A portion of this fee, amounting to \$50.00 is used to pay for the application's publication in the newspaper of choice. In the event that an application is denied prior to publication, the applicant or the person who paid the initial application fee is entitled to a \$50.00 remittance. The State Engineer finds that a portion of the original application fee, represented by the \$50.00 publication fee can be remitted to the appropriate party, should Application 76027 be denied.

⁴ Nevada Division of Water Resources Orders and Rulings database, Ruling Query Results, Hydrographic Basin 162, July 16, 2007, official records in the Office of the State Engineer.

⁵ NRS § 533.370(5).

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁶

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁷

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

III.

Application 76027 was filed to appropriate underground water from the Pahrump Valley Hydrographic Basin. The State Engineer has denied previous applications that requested new appropriations of underground water for similar purposes from this groundwater basin. These applications were denied on the grounds that their approval would impair existing rights and would threaten to prove detrimental to the public interest. Except for the exceptions set forth under State Engineer's Order Number 1107, no new appropriations of underground water are allowed from the Pahrump Valley Hydrographic Basin. The State Engineer concludes that the approval of Application 76027 is prohibited by State Engineer's Order No. 1107; therefore, it must be denied.

⁶ NRS chapters 533 and 534.

⁷ NRS § 533.370(5).

RULING

Application 76027 is hereby denied on the grounds that its approval would violate the provisions of State Engineer's Order No. 1107.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/MDB/jm

Dated this 1st day of
August, 2007.