

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

IN THE MATTER OF APPLICATION 70264)
FILED TO APPROPRIATE TREATED)
EFFLUENT FOR PRIMARY STORAGE)
WITHIN THE WARM SPRINGS VALLEY)
HYDROGRAPHIC BASIN (84), WASHOE)
COUNTY, NEVADA.)

RULING

#5807

GENERAL

I.

Application 70264 was filed on July 24, 2003, by Palomino Valley Associates to appropriate 1.0 cubic feet per second (cfs) of treated effluent from a proposed wastewater treatment plant, in the Warm Springs Valley Hydrographic Basin. The proposed manner of use is primary storage for eventual secondary use under future applications. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 32, T.23N., R.21E., M.D.B.&M.¹

II.

Application 70264 was timely protested by Washoe County. The Protestant requested that Application 70264 be denied on the grounds that issuing the permit would prove untimely as Washoe County intends to make application upon acquisition of the proposed facility.

FINDINGS OF FACT

I.

Nevada Revised Statutes 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that sufficient evidence is available in the Office of the State Engineer to evaluate the merits of Application 70264; therefore, a hearing on this matter is not necessary.

¹ File No. 70264, official records in the Office of the State Engineer.

II.

An informal field investigation conducted on October 4, 2005, in conjunction with the annual crop and pumping inventory for Warm Springs Valley identified no treatment plant currently in existence from which to make an appropriation. The State Engineer finds that the source of effluent requested for appropriation under the application does not exist.

III.

The Warm Springs Valley crop and pumping inventory fieldwork also identified irrigation as the dominant use within the Specific Plan Area identified in the "Warm Springs Area Plan" adopted May 7, 1991, from which effluent is supposed to be generated for treatment. The State Engineer finds that the source of effluent for the proposed treatment plant does not exist.

IV.

Tentative maps for the subdivision of a portion of Warm Springs Valley are on file, most recently for Warm Springs Ranch; however, no final approvals have been sought for this or any subdivision in the basin. The State Engineer finds that there is no approved effluent generating development in Warm Springs Valley to be treated for further appropriation.

V.

By certified letter dated October 11, 2006, the State Engineer indicated to the Applicant that Washoe County's protest alleged that since Washoe County's Development Code requires dedication of all water and sewer infrastructure within Washoe County to the County, that it would be the owner and operator of the treatment plant and there is no information in the State Engineer's file that the Applicant is in negotiations with Washoe County for use of the effluent generated by the proposed treatment plant. In response to an inquiry from the State Engineer's office in July 2005, the Applicant confirmed that once the treatment plant was constructed it would be turned over to Washoe County.

Nevada Revised Statute § 533.440 provides for the primary and secondary permits for reservoir storage and secondary use of the water so stored. Subsection 3 provides that, effluent discharged from a sewage treatment plant can be appropriated under a secondary permit under the reservoir primary-secondary permit procedure; however, the person requesting the appropriation of effluent under the secondary permit must provide proof that he has entered into an agreement with the owner of the primary reservoir, which in this case will be Washoe County, for a permanent and sufficient interest in the reservoir.

The State Engineer's letter of October 11, 2006, indicated that if Washoe County was the owner of the treatment facility today, the State Engineer would not issue Palomino Valley Associates a primary permit. The effluent in the treatment plant belongs to the treatment plant owner until discharged outside that plant and to claim some use to the water as it is discharged from the treatment plant requires compliance with the primary-secondary permit process in NRS § 533.440. The State Engineer expressed his concern that to grant a primary permit to Palomino Valley Associates when it is admitted that the plant will belong to Washoe County would be in conflict with NRS § 533.440 and would, in essence, make Washoe County a party to a contract it did not negotiate.

Therefore, by the letter, the State Engineer offered Palomino Valley Associates the opportunity to withdraw Application 70264; otherwise, the Applicant was ordered to file an answer to the protest by November 10, 2006, to address this issue and the Protestant was provided until December 11, 2006, to reply to any such answer. The State Engineer indicated he would then issue a ruling with his decision on the application.

The return receipt for the certified letter to the Applicant was received in the Office of the State Engineer on October 20, 2006. The State Engineer finds the Applicant did not file an answer to the protest as ordered and as such the application can be considered for denial.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

² NRS chapter 533.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where.³

- 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 70264 was filed to appropriate treated effluent for primary storage from a proposed treatment plant within Warm Springs Valley Hydrographic Basin. The Applicant has failed to submit the information requested to the State Engineer's Office.

The State Engineer concludes that, without the additional information, sufficient information is not available to properly guard the public interest.

RULING

Application 70264 is hereby denied on the grounds that no water exists at the source and granting the application would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/SJT/jm

Dated this 4th day of

January, 2008.

³ NRS § 533.370(5).