

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

IN THE MATTER OF APPLICATION 62136)
FILED TO CHANGE THE POINT OF)
DIVERSION, PLACE AND MANNER OF USE OF)
WATERS PREVIOUSLY APPROPRIATED)
FROM AN UNDERGROUND SOURCE WITHIN)
PAHRUMP VALLEY GROUNDWATER BASIN)
(162), NYE COUNTY, NEVADA.)

RULING

#4541

GENERAL

Application 62136 was filed on May 15, 1996, by Central Nevada Utilities Company to change the point of diversion, place and manner of use of 0.0526 cubic feet per second (cfs), not to exceed 25 acre-feet annually, of water previously appropriated under Permit 56909.¹ Application 62136 proposes to change the manner of use from irrigation to quasi-municipal purposes (29 homes) within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, T.20S., R.54E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T.20S., R.54E., M.D.B.&M.

FINDINGS OF FACT

I.

The State Engineer initially described and designated a portion of the Pahrump Valley Artesian Groundwater Basin on March 11, 1941, under the provisions of NRS § 534.030, as a basin in need of administration.² The State Engineer subsequently extended the boundaries of the designated area of the Pahrump Valley Artesian Groundwater Basin on January 15, 1948,³ and on January 23, 1953.⁴

¹ File No. 62136, official records of the office of the State Engineer.

² State Engineer's Order No. 176, dated March 11, 1941, official records in the office of the State Engineer.

³ State Engineer's Order No. 193, dated January 15, 1948, official records of the office of the State Engineer.

⁴ State Engineer's Order No. 205, dated January 23, 1953, official records of the office of the State Engineer.

On October 26, 1987, the State Engineer issued Order No. 955 wherein he found that the groundwater levels in the Pahrump Valley were declining and ordered that all pending applications filed to appropriate water from the east side of the Pahrump Valley Artesian Groundwater Basin on the Pahrump and Manse Fans would be denied; all pending applications for all uses, except small commercial uses on the valley floor up to 5,000 gallons per day, would be denied; and further ordered that all new applications filed to appropriate water for irrigation purposes on lands in Pahrump Valley that have had a certificated water right forfeited where the forfeiture occurred prior to January 1, 1988, would be considered for approval on an individual basis; however, such applications would only be considered if they had been filed within 60 days of the date the water right had been declared forfeited.⁵

On November 8, 1994, the State Engineer issued Order No. 1107⁶ wherein he further restricted approvals to only those applications filed for commercial (non-living units) or industrial purposes off the fan and only those applications which seek to appropriate 1,800 gallons per day (gpd) or less and where the property is zoned for such purposes, or those applications filed for environmental purposes filed pursuant to NRS § 533.437. All other applications to appropriate ground water within the designated Pahrump Valley Artesian Basin would be denied. The purpose of Order No. 1107 was to clarify that no additional living units were going to be permitted, that commercial uses would only be allowed for non-living units, and further restricted the quantity that would be allowed for those commercial uses from 5,000 gpd to the 1,800 gpd - the amount a person could use without permission from the State Engineer under the domestic well exception to the water law.

⁵ State Engineer's Order No. 955, dated October 26, 1987, official records of the office of the State Engineer.

⁶ State Engineer's Order No. 1107, dated November 8, 1994, official records of the office of the State Engineer.

The State Engineer finds that Application 56909 was filed consistent with the provisions of Order No. 955 on water rights that had been forfeited by ruling dated September 13, 1991,⁷ under Permit 23943, Certificate 7040, and Permit 11538, Certificate 4997. The State Engineer further finds that new appropriations for quasi-municipal water rights have not been granted in the Pahrump Valley Groundwater Basin since the entry of Order No. 955 in 1987,⁸ which predates Application 62136, and predates the refiling under Permit 56909 on the forfeited water right.

II.

State Engineer's Order No. 1107 states that the United States Geological Survey estimates the perennial yield⁸ of the Pahrump Valley Artesian Basin to be 19,000 acre-feet annually, and that the State Engineer estimates the perennial yield to be on the order of 12,000 acre-feet annually based on outflow to the Amargosa-Ash Meadows of some 7,000 acre-feet annually. The Order further stated that existing groundwater rights of record exceeded 75,000 acre-feet and that pumpage of groundwater in the basin was in excess of the perennial yield. Permit 56909 has a junior priority date in the groundwater basin of November 8, 1991.

⁷ The forfeiture period ran in 1987.

⁸ The perennial yield of a hydrologic basin is the maximum amount of water of usable chemical quality that can be consumed economically each year for an indefinite period of time. Perennial yield cannot exceed the natural replenishment to an area indefinitely, and ultimately is limited to the maximum amount of natural recharge that can be salvaged for beneficial use. If the perennial yield is continually exceeded groundwater levels will decline until the groundwater reservoir is depleted. Withdrawals of ground water in excess of the perennial yield contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased economic pumping lifts, land subsidence and possible reversal of ground water gradients which could result in significant changes in the recharge-discharge relationship. State Engineer's Office, WATER FOR NEVADA, STATE OF NEVADA WATER PLANNING REPORT NO. 3, p. 13, Oct. 1971.

NRS § 534.120 provides that within an area that has been designated by the State Engineer if, in the judgment of the State Engineer, ground water is being depleted, the State Engineer may make rules and regulations to regulate withdrawal of the ground water as is deemed essential for the public welfare. Nevada is a pure prior appropriation state, first in time first in right.⁹ If the State Engineer were to regulate a groundwater basin, in other words, curtail use of ground water, the first person to have their water rights curtailed would be the most junior appropriation, i.e., the latest in time.

The State Engineer finds that since Permit 56909 has such junior priority date, if the State Engineer were to regulate the groundwater basin to prevent overdrafting, it would be one of the first rights to have pumpage curtailed. However, if the State Engineer were to allow these rights to be changed from irrigation to quasi-municipal (29 homes) it would be difficult, if not impossible, to curtail the use of water from someone's home as opposed to having an irrigated field lie fallow.

III.

NRS § 534.120(2) provides for preferred uses of water within a designated groundwater basin. Municipal, quasi-municipal, industrial and commercial uses of water are given a higher preference for use than irrigation. If a permit were to be granted under this change application it would allow the use of the water to be changed from irrigation to quasi-municipal for 29 homes, thereby in effect giving it a more senior preferential status in terms of regulation of the groundwater basin. In the event of basin regulation in all likelihood the public welfare would require the State Engineer to curtail the use of water for irrigation held by more senior appropriators before curtailing any water use of water to domestic residences in direct contradiction of the prior

⁹ Jones v. Adams, 19 Nev. 78 (1885).

appropriation system of water law found in Nevada. The State Engineer finds that if a permit were to be granted under this change application while not actually changing the priority date, in effect it would give to any permit granted a more senior preference of use, and thereby upon basin regulation interferes with existing rights established under the prior appropriation system and is detrimental to the public interest. The State Engineer finds that the intent of the refiling provision under State Engineer's Order No. 955 was only to allow the holder of the forfeited water right to maintain any value that person had in that specific place of use as irrigated land. The State Engineer further finds that if the applicant was allowed to change a permit granted in 1992 to quasi-municipal purposes on a refile of a 1987 forfeited irrigation right that person would have obtained an unfair advantage over other applicants denied quasi-municipal permits since 1987; therefore, threatening to prove detrimental to the public interest.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the subject matter of this action and determination.¹⁰

II.

No quasi-municipal rights have been granted in the Pahrump Valley Groundwater Basin since the entry of the State Engineer's Order No. 955 in 1987. There have been demonstrated dropping groundwater levels in the groundwater basin and the basin has a great potential for the future regulation of the use of the ground water. To allow an irrigation water right that was granted on a refile of a forfeited water right to be changed to quasi-municipal use would conflict with existing more senior rights in the event of basin regulation, would threaten to prove detrimental to the public

¹⁰ NRS Chapters 533 and 534.

interest in the overall management of the groundwater basin as the more junior right would be difficult to curtail, and would conflict with the orders for management of the groundwater basin that do not allow any further water rights to be granted for living units.

III.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:¹¹

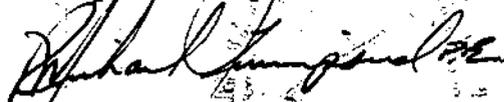
- a. the proposed use conflicts with existing rights; or
- b. the proposed use threatens to prove detrimental to the public interest.

The State Engineer concludes that to grant this change application would, in effect, elevate this water right to a higher status of preferred use, quasi-municipal for 29 homes, while having a very junior priority date, thereby making it difficult, if not impossible, for the State Engineer to curtail said use in the event of basin regulation in a groundwater basin having a great potential for regulation. The State Engineer further concludes that to allow such change in manner of use would threaten to prove detrimental to the public interest as it would circumvent the intent of the orders regulating the groundwater basin.

RULING

Application 62136 is hereby denied on the basis that to change the manner of use would threaten to prove detrimental to the public interest.

Respectfully submitted,



E. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/ab

Dated this 18th day of

June, 1997.

¹¹ NRS Chapter 533.370(3)