

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

IN THE MATTER OF APPLICATION 69519)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE HUALAPAI FLAT)
HYDROGRAPHIC BASIN (24), WASHOE)
COUNTY, NEVADA.)

RULING

#5306

GENERAL

I.

Application 69519 was filed on January 30, 2003, by Black Rock City, L.L.C., to appropriate 1.0 cubic foot per second of water from an underground source for commercial and domestic purposes. The proposed place of use is described as being portions of Sections 35 and 36 all within T.35N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, T.35N., R.23E., M.D.B.&M.¹

II.

Application 69519 was timely protested by Kevin and Julia Brittner, Jackson Ranch, Jason Walters, Sylvia and Louis Fascio, Jr., Washoe County, High Rock Holding, LLC, and Michael B. Stewart on various grounds primarily including that the basin is fully appropriated, the appropriation would conflict with existing rights, and the granting of the application would threaten to prove detrimental to the public interest.¹

FINDINGS OF FACT

I.

On August 14, 2003, the State Engineer held a public hearing in the matter of the designation of the Hualapai Flat Hydrographic Basin. Based on information received at the hearing and other data and information available to the State Engineer, it was

¹ File No. 69519, official records in the Office of the State Engineer.

determined that the groundwater basin is in need of additional administration under the provisions of the Nevada Revised Statute chapter 534. As a result, the State Engineer issued Order No. 1172 designating the Hualapai Flat Hydrographic Basin and also ordered that only applications for preferred uses for a maximum 4,000 gallons per day (gpd) will be considered.² Application 69519 was filed for commercial and domestic use for 15.33 acre-feet of water, which equates to approximately 13,660 gpd. The State Engineer finds that Application 69519 can only be considered as a preferred use for a maximum duty of 4,000 gpd in accordance with State Engineer's Order No. 1172.

II.

The protests of Michael B. Stewart and High Rock Holding, LLC, are identical. The primary concern of the protests appear to be that Application 68938, filed by High Rock Holding, LLC, prior to and in the same basin as Application 69519, had not been approved. The protest states, in part, "Since the State Engineer has apparently taken the view that the Hualapai groundwater basin is fully appropriated as evidenced by his refusal to act upon Application 68938, it is clear that he must apply the same standard to Application 69519".¹ Subsequent to the filing of these protests, Application 68938 was approved by the State Engineer in accordance with State Engineer's Order No. 1172 for 4,000 gpd. The State Engineer finds that the protest issues of Michael B. Stewart and High Rock Holding, LLC, have been settled by the issuance of Permit 68938 and by State Engineer's Order No. 1172.

III.

The protest of Washoe County states, "...there is no unappropriated water in the source of the supply...". The State Engineer finds that Order No. 1172 has addressed Washoe County's concerns on water availability by curtailment of appropriations within the Hualapai Flat Hydrographic Basin with the exception for small preferred uses.

IV.

The protests of Kevin and Julia Brittner, Jackson Ranch, Jason Walters, and Sylvia and Louis Fascio are identical. The protests raise concerns over a new appropriation lowering the groundwater table in existing wells and that the basin is fully appropriated. The State Engineer finds that Order No. 1172 has addressed the concerns

² State Engineer's Order No. 1172, dated August 29, 2003, official records in the Office of the State Engineer.

on water availability and the groundwater table by curtailment of appropriations within the Hualapai Flat Hydrographic Basin.

Also, the protests indicate that the use of water is for support facilities associated with the annual Burning Man event for which a permit has been denied by Washoe County. Currently, there are negotiations with the five appellants of the Burning Man permits, the Washoe County Commissioners and event organizers in an effort to reach a compromise to allow the support facilities. Any water right permit issued under Application 69519 would not waive any permitting requirements by other State, Federal, and local agencies. The State Engineer finds that sufficient protections exist within Nevada Water Law to protect the public interest should the Burning Man organizers fail to obtain the necessary permits.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer concludes that the protest issues raised against the approval of Application 69519 have been adequately addressed by the subsequent issuance of State Engineer's Order No. 1172 and Application 69519 can be considered for approval as limited.

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where: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.

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(3).

RULING

The protests to Application 69519 are hereby overruled and Application 69519 is hereby approved subject to State Engineer's Order No. 1172, existing rights and the payment of the statutory permit fees.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 30th day of
October, 2003.