

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

IN THE MATTER OF PROTESTED )  
APPLICATIONS 71251 AND 71252 FILED TO )  
CHANGE THE POINT OF DIVERSION, )  
PLACE OF USE AND MANNER OF USE OF A )  
PORTION OF THE PUBLIC WATERS OF AN )  
UNDERGROUND SOURCE PREVIOUSLY )  
APPROPRIATED UNDER PERMITS 63146 )  
AND 63147, RESPECTIVELY, WITHIN THE )  
PLEASANT VALLEY HYDROGRAPHIC )  
BASIN (88), WASHOE COUNTY, NEVADA. )

**RULING**

**#5546**

**GENERAL**

**I.**

Application 71251 was filed on May 26, 2004, by Hans Burkhardt to change the point of diversion, place of use and manner of use of 40.0 acre-feet, a portion of underground water previously permitted for appropriation under Permit 63146. The proposed manner of use and place of use is described as being for municipal purposes within all of Sections 1, 12 and 13, and portions of Sections 2, 11, 14, 22, 23, 24, and 25, T.17N., R.18E., M.D.B.&M., all of Sections 1 through 12, inclusive, 16, 17 and 18, and portions of Sections 13, 14, 15, 19, 20, 21, 22, 24, and 30, T.17N., R.19E., M.D.B.&M., all of Sections 1 through 18, inclusive, 23 and 24, and portions of Sections 19, 20, 21, 22, 25, 26, 27, and 29, T.17N., R.20E., M.D.B.&M., all of Sections 13, 14, 24, 25, and 36, and portions of Sections 15, 22, 23, 26, and 35, T.18N., R.18E., M.D.B.&M., all of Sections 3, 4, 9, 10; and 14 through 36, inclusive, and portions of Section 13, T.18N., R.19E., M.D.B.&M., all of Sections 3, 4, 9, 10, 11, 13, 14, 15, 16, 17, and 19 through 35, inclusive, and portions of Sections 2, 5, 8, 12, 18, and 36, T.18N., R.20E., M.D.B.&M., portions of Sections 7, 18, and 19, T.18N., R.21E., M.D.B.&M., and all of Section 34, and portions of Sections 32, 33, and 35, T.19N., R.20E., M.D.B.&M. The changes requested by Application 71251, if approved, would transfer the Applicant's existing point of diversion from the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 33, T.18N., R.20E., M.D.B.&M. to a point, which is located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 10, T.17N, R.19E., M.D.B.&M. The existing place of use under Permit 63146 is described as being located within

portions of Sections 28, 33, and 34, T.18N, R.20E., M.D.B.&M., and portions of Section 3, T.17N, R.20E., M.D.B.&M.<sup>1</sup>

## II.

Application 71252 was filed on May 26, 2004, by Hans Burkhart to change the point of diversion, place of use and manner of use of 40.0 acre-feet, a portion of underground water previously permitted for appropriation under Permit 63147. The proposed manner of use and place of use is described as being for municipal purposes within all of Sections 1, 12 and 13, and portions of Sections 2, 11, 14, 22, 23, 24, and 25, T.17N., R.18E., M.D.B.&M., all of Sections 1 through 12, inclusive, 16, 17 and 18, and portions of Sections 13, 14, 15, 19, 20, 21, 22, 24, and 30, T.17N., R.19E., M.D.B.&M., all of Sections 1 through 18, inclusive, 23 and 24, and portions of Sections 19, 20, 21, 22, 25, 26, 27, and 29, T.17N., R.20E., M.D.B.&M., all of Sections 13, 14, 24, 25, and 36, and portions of Sections 15, 22, 23, 26, and 35, T.18N., R.18E., M.D.B.&M., all of Sections 3, 4, 9, 10, and 14 through 36, inclusive, and portions of Section 13, T.18N., R.19E., M.D.B.&M., all of Sections 3, 4, 9, 10, 11, 13, 14, 15, 16, 17, and 19 through 35, inclusive, and portions of Sections 2, 5, 8, 12, 18, and 36, T.18N., R.20E., M.D.B.&M., portions of Sections 7, 18, and 19, T.18N., R.21E., M.D.B.&M., and all of Section 34, and portions of Sections 32, 33, and 35, T.19N., R.20E., M.D.B.&M. The changes requested by Application 71252, if approved, would transfer the Applicant's existing point of diversion from the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 33, T.18N., R.20E., M.D.B.&M. to a point, which is located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 10, T.17N, R.19E., M.D.B.&M. The existing place of use under Permit 63147 is described as being located within portions of Sections 28, 33, and 34, T.18N, R.20E., M.D.B.&M., and portions of Section 3, T.17N, R.20E., M.D.B.&M.<sup>2</sup>

## III.

Applications 71251 and 71252 were timely protested by Callamont Associates, LLC on the following grounds:<sup>1,2</sup>

Callamont Associates, LLC is the owner of land of which a tentative map has been approved by Washoe County. The tentative map is known as Callamont Estates and Golf Course. The land is located in the Callahan Ranch area of the Galena Fan.

<sup>1</sup> File No. 71251, official records in the Office of the State Engineer.

<sup>2</sup> File No. 71252, official records in the Office of the State Engineer.

The State Engineer approved Permits 67368 and 67369 in accordance with the State Engineer's Ruling 4741. These permits are intended to provide the water resources necessary for the Callamont Estates and Golf course project. The wells constructed under these two permits are commonly referred to as the "Callamont Wells". Callamont Associates, LLC provided to the State Engineer numerous pumping analysis demonstrating pumping strategies and drawdown scenarios based upon the existing permits within the area of the Callamont wells. The State Engineer in the approval of the above referenced permits limited the total combined duty of these permits and other permits located in the fan area and held by Washoe County to that amount which already existed within the Galena Fan. Furthermore, the State Engineer required a monitoring plan, together with the condition that if adverse impacts occur to adjacent domestic wells then the State Engineer may restrict or prohibit pumping unless the parties have agreed to a mitigation plan. The permits are held by Washoe County, however, if an impact does occur Callamont Estates, LLC is ultimately responsible for the impact and or the mitigation plan, which may be required under Permits 67368 and 67369.

The proposed applications 71251 and 71252 originate in the most easterly valley portion of the Pleasant Valley Hydrographic Basin (88) and propose to move the water rights to an existing well site in the Galena Fan area. Furthermore, the proposed well site is one that was considered in the pumping scenario's, of the existing water rights, provided to the State Engineer by Callamont Associates, LLC.

Washoe County has identified the Galena Fan and the South Truckee Meadows area as having a limited available water supply and has limited the acceptable water rights for municipal use to those already held by Washoe County within these areas. The transfer of water from the easterly portion of the valley to the fan area would constitute a new appropriation within the already limited Galena Fan area. This additional appropriation created by applications 71251 and 71252 would adversely impact existing rights as approved by the State Engineer within the Galena fan area. Furthermore, if the proposed applications were approved they would increase pumping within the area of the Callamont Estates wells. These impacts would unjustly require Callamont Estates to mitigate for pumping effects unrelated to the pumping of the Callamont wells.

Callamont Associates, LLC respectful [*sic*] request that the State Engineer deny the proposed applications 71251 and 71252.

#### IV.

Applications 71251 and 71252 were timely protested by the Callahan/Fawn Lane Neighbors Group on the following grounds:<sup>1,2</sup>

We, the Callahan/Fawn Lane Neighbors Group, protest the transfer of water rights being requested in Application 71251 and 71252. We do so for the following reasons:

- Is there sufficient water available at the source where those water rights will be transferred to?
  - This area is in serious distress, with neighbors in all sectors of the area feeling the water pinch. There continues to be a high number of wells being stressed, not only by the drought, but also by the beginnings of what the maximum pumping will be from the municipal wells in the area. Many, many neighbors have paid to have their wells re-drilled (over the past 2-3 years) or have had to hook up to the County's water system (sometimes forced against their desires to stay on their own wells).
  - We question whether unappropriated water remains at the requested new point of diversion. Water levels are dropping in domestic wells in the Callahan Ranch-Fawn Lane area at an increasing rate, evidence that the perennial yield of this basin has already been exceeded by existing allocations. Adding a transfer to this basin further stresses a limited water resource.
- Will transferring the water rights conflict with existing water rights?
  - We believe it will. Even though a specific right is not attached to each domestic well, we as home owners believe our rights to provide ourselves water are being seriously compromised by the applicant's added request for transfer in an already stressed water system. Certain water rights holders in the area have rights to pump from the groundwater table in drought conditions if necessary, and these rights will likely be conflicted if the applicant's request for transfer is granted.
- Will transferring the water rights conflict with the protectible interests of domestic well owners?
  - We do believe this is a conflict, both with the interests of domestic well owners, as well as with the water basin in total. This is an ADDED water use not originally planned for or predicted in what has been portrayed to us by Washoe County hydrologists' computer modeling of the water basin.
  - The protectible interests of domestic well owners have already been sufficiently jeopardized by recent allocations: placing any additional burden on the area's water resources can only add to the number of domestic wells in the area that will have to be deepened in the near future.
- Will transferring the water rights be detrimental to the public interest should it be approved?

- We believe that this transfer will be detrimental to the interests of people owning domestic wells, whether they have deepened their wells or are pumping from their original wells. This proposed transfer will also be detrimental to all the area residents and neighbors, including Montreux, Galena Forest Estates, the Estates at Mt. Rose (currently under construction), the future homes of Callamont and the expanding St. James Village, along with the Callahan/Fawn Lane homes – we all have a stake in what happens with this water table.
- This transfer of water rights does not represent an equitable exchange of water resources. Water rights at the two points of diversion in question are not reasonably interchangeable because these points of diversion are in different geologic and geographic areas. The existing water rights are located in a lower valley, and the proposed area to where these rights would be diverted is in a limited alluvial fan 1000 feet higher in elevation.
- Water quality is also a concern. Is the water at the existing point of diversion of equal or greater quality to the water at the St. James well? The existing water rights are in the vicinity of a known geothermal resource area, which raises issues of elevated metals and other elements in ground and surface waters. Precious metal mineralizing systems in the general area also contribute to elevated levels of arsenic and other elements in the water wells. The onus should be on the applicant to prove that the water at the existing point of diversion is equal in quality to the water where these rights would be diverted to.
- It is the policy of the State of Nevada to encourage and promote the use of effluent where that use is not contrary to the public health, safety or welfare (NRS 533.024). Endlessly approving the transfer of water rights to the Callahan Ranch-Fawn Lane area provides no incentive for large water users in the area to use recycled water, though such use would alleviate the strain that has already been put on the area's water resources. Denial of any further transfers of water rights to this area would encourage the use of effluent in this area, freeing up existing water rights for purchase and use by developers in the area.

We believe the State Engineer has a responsibility to defend the interests of established neighbors and communities, and protect domestic well owners before allowing transfers of water rights (on paper) to an already stressed water basin. Several large production wells in this area have yet to go into full production. Their impact on the area's water resources can therefore not be accurately assessed at the present time – yet this data is vital to a determination of whether or not a new pumping allocation in this area will cause the supply of water to local domestic wells to suffer unreasonable adverse effects. The State Water Engineer should place a

moratorium on any new pumping allocations in this area until more hard data regarding the state of the area's water resources becomes available and understood.

We respectfully request that you deny this transfer of water rights to our area of limited water resources. The above statements and attached signatures are submitted in protest against the proposed transfer, which should be denied as provided for in NRS 533.370.

### FINDINGS OF FACT

#### I.

Nevada Revised Statute § 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 in the case of protested Applications 71251 and 71252 there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

#### II.

Pursuant to State Engineer's Ruling No. 2989 dated July 18, 1984, and State Engineer's Ruling No. 4757 dated July 29, 1999, the State Engineer made the following findings of fact:

1. The Galena Creek drainage basin encompasses an area of approximately 18 square miles which consists of what is known as the "Mountain Block" or mountain slopes (11.6 square miles) and the alluvial fan areas (6.4 square miles). The Galena Creek groundwater basin is a sub-basin element of the Pleasant Valley Groundwater Basin, which is additionally considered a physiographic element of the Truckee River Basin. The groundwater basin is generally coincident with the area of the alluvial fans within the drainage basin. In addition, there are two other identified sub-basin areas within the Pleasant Valley Groundwater Basin; the Pleasant Valley groundwater sub-basin and the Steamboat area sub-basin.

2. The source of all water within the Galena Creek drainage basin is precipitation which deposits a high of 65 inches at the upper elevations to a low of 15 inches at the point of lowest altitude for an average mean-annual precipitation of 33 inches or about 32,000 acre-feet. Primary evapotranspiration within the Galena Creek drainage basin is on the order of 22,000 acre-feet annually dependent on how much water enters the fracture system at the bedrock contact.

Natural primary groundwater recharge to the Galena alluvial fan area is on the order of 3,000 acre-feet annually and is derived principally

from the streambed of Galena Creek and its tributaries with minimal contribution from precipitation within the fan area.

### III.

Pursuant to State Engineer's Ruling No. 2968 dated May 23, 1984, and State Engineer's Ruling 4757 dated July 29, 1999, the State Engineer made the following findings of fact:

1. There is a clear hydrologic interconnection between the surface water sources and the groundwater system within the Pleasant Valley Hydrographic Basin.
2. Secondary groundwater recharge to the Galena fan area is closely connected to and influenced by the activity of man, and cannot be considered a long term reliable source of groundwater recharge or perennial yield.

The total inflow and outflow to the entire Pleasant Valley hydrographic area is 11,000 acre-feet. All 8,000 acre-feet of surface water outflow is committed to surface water uses under the Truckee River Decree, leaving the same 3,000 acre-feet as described above as the natural primary groundwater recharge for the entire hydrographic basin.

### IV.

The State Engineer finds that Applications 71251 and 71252 originate in the most easterly portion of the Pleasant Valley Hydrographic Basin and propose to move the points of diversion to an existing well site on the Galena fan area.

### V.

The State Engineer initially described and designated the Pleasant Valley Hydrographic Basin on March 1, 1978, under the provisions of NRS § 534.030, as a groundwater basin in need of additional administration.<sup>3</sup> The State Engineer finds the proposed points of diversion under Applications 71251 and 71252 are located within the boundaries of the designated Pleasant Valley Hydrographic Basin and are within the Galena Creek groundwater basin sub-area.

### VI.

A review of well logs on file in the Office of the State Engineer show that there are approximately 307 domestic wells within the area described as the Galena Creek groundwater basin. The use of water from domestic wells is exempt from the requirement of obtaining a water right permit under Nevada water law.<sup>4</sup> However, it is the policy of the State to recognize the importance of domestic wells as appurtenances to

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<sup>3</sup> State Engineer's Order No. 709, official records in the Office of the State Engineer.

<sup>4</sup> NRS §§ 534.013 and 534.180.

private homes and to create a protectible interest in such wells and to protect their supply from unreasonable adverse effects, which are caused by municipal, quasi-municipal or industrial uses and which cannot reasonably be mitigated.<sup>5</sup> In consideration of water right applications, the State Engineer must take into account whether the proposed change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024.<sup>6</sup>

A domestic well owner is entitled to pump a maximum of 1,800 gallons per day, which would equate to 2.02 acre-feet annually, without the benefit of a water right. Therefore, a potential of 620 acre-feet annually could be pumped from the 307 domestic wells within the Galena Creek groundwater basin sub-area. The committed groundwater resource in the form of permits and certificates issued by the State Engineer to appropriate underground water from the area described as the Galena Creek groundwater basin sub-area is currently 3,554 acre-feet annually.<sup>7</sup> The State Engineer finds this amount combined with the domestic well amount means there is the potential of pumping 4,174 acre-feet annually of water from the Galena Creek groundwater basin sub-area.

## VII.

Withdrawals of groundwater in excess of the perennial yield contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increase in cost due to increased pumping lifts, land subsidence and possible reversal of groundwater gradients which could result in significant changes in the recharge-discharge relationship.

Water-level data collected at several of the domestic wells within the Galena Creek groundwater basin sub-area by the County of Washoe indicates the following:

1. For wells that have been measured for an average period of the last two years and nine months, the average water-level change has been a drop of 11.9 feet.
2. For wells that have been measured for an average period of the last five years and six months, the average water-level change has been a drop of 19.2 feet.
3. For wells that have been measured for an average period of the last twelve years and two months, the average water-level change has been a drop of 16.4 feet.

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<sup>5</sup> NRS § 533.024 (2).

<sup>6</sup> NRS § 533.370 (4).

<sup>7</sup> Special Hydrographic Abstract, water rights database, Basin 88, September 29, 2005, official records within the Office of the State Engineer.

4. For wells that have been measured for an average period of the last fourteen years and five months, the average water-level change has been a drop of 24.5 feet.

The State Engineer finds that water-levels in wells located within the Galena fan area have been showing a steady drop over the last decade.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>8</sup>

#### II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>9</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. or 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.

The proposed points of diversion under Applications 71251 and 71252 lie within the area described as the Galena Creek groundwater basin sub-area, an area of concentrated municipal water rights and a large residential area that is supplied water from approximately 307 domestic wells. A total maximum of 4,174 acre-feet annually of water can be pumped from the domestic wells and permitted and certificated water rights within the Galena Creek groundwater basin sub-area.

The State Engineer concludes that to grant the permits under Applications 71251 and 71252 in an area where the quantity of water under existing appropriations and existing use by domestic wells exceeds the natural recharge would conflict with existing rights, would conflict with protectible interests in existing domestic wells, and would threaten to prove detrimental to the public interest.

#### IV.

The State Engineer concludes that the current hydrologic conditions that exist on the area described as the Galena Creek groundwater basin sub-area are resulting in a drop

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<sup>8</sup> NRS chapters 533 and 534.

<sup>9</sup> NRS § 533.370 (4).

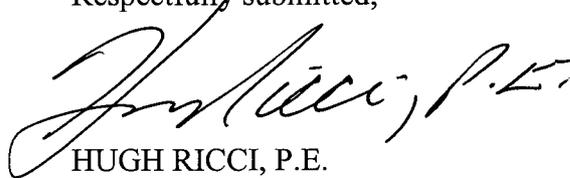
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in the local water table level and to move additional water rights into the area would conflict with existing rights and protectible interests in existing domestic wells and threaten to prove detrimental to the public interest.

**RULING**

The protests to Applications 71251 and 71252 are hereby upheld and the applications are denied on the grounds that their issuance would conflict with existing rights, would conflict with protectible interests in existing domestic wells, and would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/KE/jm

Dated this 19th day of  
January, 2006.