

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

IN THE MATTER OF APPLICATION 76617)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE BLACK MOUNTAINS AREA)
HYDROGRAPHIC BASIN (215), CLARK)
COUNTY, NEVADA.)

RULING
5981

GENERAL

I.

On January 11, 2008, Michael A. Rueth Bluewater Diamond Mine filed Application 76617 to appropriate 20 cubic feet per second (cfs) of the underground water of the Black Mountains Area Hydrographic Basin to be used for power purposes within portions of Section 27, T.20S., R.64E., M.D.B.&M. The application indicates the water would be pumped into injection wells that reach past the carbonate-rock aquifer to supply water for geothermal wells. The application also indicates the cost of the project is \$100,000,000 dollars.¹

II.

Application 76617 was timely protested by U.S. Silica Company on the grounds there is no water available for appropriation, that the 20 cfs applied for amounts to 14,500 acre-feet annually (afa), the appropriation of that amount would conflict with existing rights, the Applicant has not demonstrated access to the proposed point of diversion or place of use and has not demonstrated the financial ability to build the project as required by NRS § 533.375(2).¹

III.

Application 76617 was timely protested by R.J. Johnson on behalf of Larenne Dawson and Jim Scott on the grounds that the proposed use of the water would conflict with their existing water rights and mining rights and there is no water available for appropriation in the basin and under those circumstances granting the application would be detrimental to the public interest.¹

¹ File No. 76617, official records in the Office of the State Engineer.

IV.

Application 76617 was timely protested by R.J. Johnson on behalf of Pabco Building Products, LLC, on the grounds that the proposed use of the water would conflict with their existing water rights and there is no water available for appropriation in the basin and under those circumstances granting the application would be detrimental to the public interest.¹

V.

Application 76617 was timely protested by the United States Department of Interior, National Park Service (NPS) on the grounds that the appropriation is located in the Black Mountains Area, which has an estimated recharge of 100 acre-feet with an additional 1,200 afa entering the basin as subsurface flow from the Las Vegas Valley with discharge from the valley flowing to Lake Mead. The NPS alleges that the committed ground-water resource in 2008 was 7,216 afa and there are 30,625 afa in pending applications senior to Application 76617; therefore, the withdrawal proposed by Application 76617 would greatly exceed the recharge of the area resulting in water mining, which would reduce or eliminate the discharge from springs within the Lake Mead National Recreational Area. The NPS alleges that the ground-water withdrawal proposed by the application may affect ground-water flow paths and capture ground-water that naturally discharges at the Muddy River Springs. Additionally, that the proposed withdrawal is located in an area within the carbonate-rock province and the State Engineer pursuant to State Engineer's Order No. 1169 found that further hydrologic studies are required before any additional pending applications will be considered in the area. The conclusions of the NPS protest assert that there is no water available for appropriation because the committed resources exceed the estimated ground-water recharge, the approval and development of the water applied for would impair the water rights of the United States, the public interest would not be served by granting the application because the nationally important water resources and water-related resources of the Lake Mead National Recreational Area would be diminished or impaired and the application is located in a hydrographic area that requires further study before additional permits may be issued.¹

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.

II.

In 2001, the State Engineer held hearings addressing water right applications that had been filed in Coyote Springs Valley in southern Nevada for extremely large quantities of water. These applications are in a regional flow system that is commonly known as the carbonate-rock aquifer province, which may have flows from the far northern part of eastern Nevada, down the east central side of Nevada all the way to Lake Mead and Death Valley. As a result of those hearings, and also because of the many other applications that had been filed for quantities of water far in excess of the established perennial yields in basins in southern Nevada, the State Engineer in March 2002 issued State Engineer's Order No. 1169. Pursuant to that order, the State Engineer held all applications for water from the carbonate-rock aquifer province in several basins in southern Nevada, including the Black Mountains Area Hydrographic Basin, in abeyance while a study was conducted that required pumping of 50 percent of the water already appropriated for a minimum of two years. The State Engineer finds that to date the pumping study has not been completed. The State Engineer finds Nevada Revised Statute § 533.368 provides the State Engineer the authority for ordering such a study prior to acting on an application.

The State Engineer finds there are five applications in Black Mountains Area Hydrographic Basin that are senior in priority to Application 76617 filed for more than 16,000 acre-feet of water. The State Engineer finds that at present there are 7,037 afa of existing ground-water rights in the Black Mountains Area Hydrographic Basin. The State Engineer finds the estimated perennial yield of the Black Mountains Area Hydrographic Basin is 1,300 afa.

The State Engineer finds he cannot conceive of there ever being sufficient unappropriated water available to grant Application 76617.

III.

The Applicant also had Application 76354 pending for the same purpose in this hydrographic basin. Application 76354 was denied by State Engineer's Ruling No. 5899 on October 21, 2008, on the grounds there is no water available in the quantity applied for considering existing rights and pending applications being held in abeyance under State Engineer's Order No. 1169. The State Engineer finds the reasoning in Ruling No. 5899 applies here and adopts and incorporates Ruling No. 5899 into this ruling.

CONCLUSIONS

I.

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

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.

The State Engineer concludes that with the water already appropriated and the senior pending applications for water in this hydrographic basin that it is inconceivable that water will ever be available in the quantity applied for under Application 76617. The State Engineer concludes there is no independent scientific report to support the Applicant's allegations of the water source "under Lake Mead" being a different source of water than that naturally occurs in bedrock below the water table.

² NRS chapters 533 and 534.

³ NRS § 533.370(5).

RULING

Application 76617 is hereby denied as there is no water available in the quantity applied for considering existing rights and pending applications being held in abeyance under State Engineer's Order No. 1169.

Respectfully submitted,

FOI2 Tracy Taylor P.E.
TRACY TAYLOR, P.E.
State Engineer

TT/jm

Dated this 20th day of
April, 2009.