

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

IN THE MATTER OF APPLICATION 78189 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE IMLAY AREA HYDROGRAPHIC )  
BASIN (72), PERSHING COUNTY, NEVADA. )

**RULING**

**#6203**

**GENERAL**

**I.**

Application 78189 was filed on March 26, 2009, by Charles Azzarello and Judy Kritikos to appropriate 0.1114 cubic feet per second (cfs) of underground water. The proposed point of diversion and place of use are described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.30N., R.33E., M.D.B.&M., more specifically, within Lot 497 of the Rye Patch Estates, Phase "A" Subdivision. The proposed manner of use is for commercial purposes to service an office, construction yard and concrete batch plant with the annual water demand estimated by the Applicants' agent to be 10.0 acre-feet.<sup>1</sup>

**II.**

Application 78189 was timely protested by Georgia Morgan on grounds as summarized below:<sup>1</sup>

1. The proposed point of diversion is located one block from her residence.
2. The Applicant has applied for 10.0 afa of water within an over appropriated groundwater basin.
3. Possible groundwater contamination.
4. The approval of Application 78189 would not benefit the community as a whole.

Application 78189 was timely protested by Bradley D. Quilici on grounds that:<sup>1</sup>

Basin is over appropriated. Well monitoring has shown a SIGNIFICANT drop in well levels in the past 2 years. Cement plant could add to ground water contamination.

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<sup>1</sup> File No. 78189, official records in the Office of the State Engineer.

A third protest was received from Tom Glab, the General Manager of the Lovelock Meadows Water District, but this protest was eventually withdrawn on August 12, 2009.<sup>1</sup>

### **FINDINGS OF FACT**

#### **I.**

Nevada Revised Statute § 533.365(4) 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 a water right application. The State Engineer finds that in the case of Application 78189 there is no need to supplement the records of the Office of the State Engineer with additional information relating to the application and its protest issues.

#### **II.**

The proposed place of use described by the Applicant is contained within Phase A of the Rye Patch Estates Subdivision, which is comprised of portions of Sections 9, 15, 16, 21 and 22, all located within T.30N., R.33E., M.D.B.&M. The Nevada Division of Water Resources approved the final map for this subdivision on November 6, 1985.<sup>2</sup> To provide water service to the subdivision, R.J.B. Development was required by the State Engineer's office to formally relinquish 290.7 acre-feet of underground water rights under Permit 19668, Certificate 6945. The relinquishment allowed each individual lot to be serviced by a single domestic well, which would be limited to a daily draught of 500 gallons, which equates to 0.56 acre-feet of water per year.

Application 78189 was filed to appropriate an additional 10.0 acre-feet annually of underground water from within the Rye Patch Estates Subdivision. The State Engineer finds that the commercial use requested by the Applicant cannot be permitted due to the fact that the amount of water requested by Application 78189 greatly exceeds the 0.56 acre-feet per lot duty approved by the Nevada Division of Water Resources by Subdivision Review No. 2826 F-A.

#### **III.**

A review of the records in the Office of the State Engineer identified several earlier attempts to increase the amount of water that can be appropriated from within the subdivision. Application 55238 requested an additional 1.0 cfs to serve four single family dwellings located upon Lot 19,

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<sup>2</sup> Subdivision Review No. 2826 F-A, official records in the Office of the State Engineer.

Block B of Phase A. On December 20, 1991, this request was denied by the State Engineer based upon a set of findings of facts and conclusions set forth in State Engineer's Ruling No. 3856.<sup>3</sup>

Among these, was the finding that, "...there is nothing in the subdivision proposal for Phase A that requests or makes allowances for water quantity for multiple-residential units or commercial activities on lots in Phase A." In addition, the State Engineer found in 1991 that, "...commercial use in the Rye Patch Estates – Phase A cannot be permitted in accordance with NRS 533.030 and NRS 534.050 if the duty exceeds the 500 gallons per day per lot (0.1825 million gallons or 0.56 acre-foot per year) approved by Subdivision Review No. 2826 F-A."

A second water right application filed by Richard J. Cotter, proposed a similar development within Lot 27. It was Mr. Cotter's intention to develop four rental units and a single family dwelling, which would require a combined annual appropriation of 2.5 acre-feet.<sup>4</sup> State Engineer's Ruling No. 3857 denied this request based upon grounds similar to those stated in the earlier ruling.<sup>5</sup>

The State Engineer finds the previous requests for new appropriations of water in excess of the 0.56 acre-foot per lot limit have been denied.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>6</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>7</sup>

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

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<sup>3</sup> State Engineer's Ruling No. 3856, dated December 20, 1991, official records in the Office of the State Engineer.

<sup>4</sup> File No. 56827, official records in the Office of the State Engineer.

<sup>5</sup> State Engineer's Ruling No. 3857, dated January 3, 1992, official records in the Office of the State Engineer.

<sup>6</sup> NRS Chapters 533 and 534.

<sup>7</sup> NRS § 533.370(2).

- C. the proposed use or change conflicts with protectable 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.

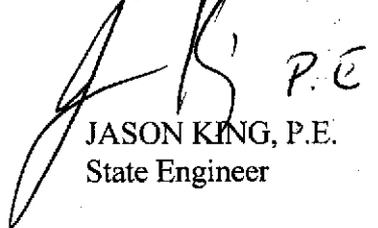
**III.**

The State Engineer concludes that to approve an underground permit in Rye Patch Estates – Phase A for more than 500 gallons per day, per lot, would conflict with existing water rights and be detrimental to the public interest.

**RULING**

Application 78189 is hereby denied on the grounds that the appropriation of additional groundwater from the area described in the application would impair existing water rights and be otherwise detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted



JASON KING, P.E.  
State Engineer

Dated this 15th day of  
October, 2012.