

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

IN THE MATTER OF APPLICATION 80388)
FILED TO APPROPRIATE WATER FROM AN)
UNDERGROUND SOURCE WITHIN THE LAS)
VEGAS ARTESIAN BASIN (212), CLARK)
COUNTY, NEVADA.)

RULING

#6205

GENERAL

I.

Application 80388 was filed on January 7, 2011, by Richard Andert to appropriate 0.008 cubic feet per second, not to exceed 2.0 acre-feet annually, of water from an underground source for commercial purposes. The proposed place of use is described as being located within a portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, T.20S., R.62E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 16.¹

FINDINGS OF FACT

I.

An examination of records within the Office of the State Engineer finds that the proposed place of use, Clark County Assessor's Parcel Number (APN) 140-16-103-002, which is within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, T.20S., R.62E., M.D.B.&M., had an appurtenant water right that was issued for quasi-municipal purposes under revocable Permit 43821 and allowed for the use of water for three homes at 1.25 gallons per minute each.² However, the State Engineer cancelled Permit 43821 on March 20, 1996, for failure to comply with permit terms. An examination of Clark County Assessor's air photography reveals there are no homes on the parcel, but rather the parcel is being used as a salvage or industrial storage facility. The remarks section of Application 80388 indicates that the water would be used for a junk yard. The State Engineer finds that no active permitted water right exists within the place of use proposed under Application 80388. The State Engineer finds the proposed place of use is a junk yard and is not occupied by three homes.

¹ File No. 80388, official records in the Office of the State Engineer.

² File No. 43821, official records in the Office of the State Engineer.

II.

Application 80388 has a proposed point of diversion that is located within the hydrologic boundaries of the designated Las Vegas Artesian Basin (LVAB), which is one of Nevada's most heavily regulated groundwater basins. Nevada Revised Statute (NRS) § 534.120 provides that within an area that has been designated by the State Engineer where, in his judgment, the groundwater basin is being depleted, the State Engineer in his administrative capacity is empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved. The application of this provision of the NRS to the LVAB is evidenced by a series of orders issued the State Engineer:³

Order No. 175 was signed by the State Engineer on January 10, 1941, designating a portion of the LVAB.

Order No. 182 was signed by the State Engineer on February 29, 1944, extending the designated portion of the LVAB.

Order No. 189 was signed by the State Engineer on November 22, 1946, extending the designated portion of the LVAB.

Order No. 196 was signed by the State Engineer on December 1, 1949, curtailing irrigation use in the LVAB.

Order No. 212 was signed by the State Engineer on November 20, 1953, regulating quasi-municipal allocations in the LVAB.

The 1955 Nevada State Legislature enacted Senate Bill No. 104, which allowed the State Engineer to issue temporary permits to appropriate groundwater, which may be revoked when water service can be furnished by an entity such as a water district or a municipality engaged in furnishing water.

Order No. 249 was signed by the State Engineer on April 18, 1961, extending the designated portion of the LVAB.

Order No. 275 was signed by the State Engineer on May 25, 1964, extending the designated portion of the LVAB.

Order No. 833 was signed by the State Engineer on December 27, 1983, whereby the remaining portion of the LVAB was designated and all applications filed to appropriate underground water to irrigate land within the designated LVAB will be denied.

³ Official records in the Office of the State Engineer.

Order No. 1021 was signed by the State Engineer on March 2, 1990, limiting the appropriations to a maximum of 4,000 gallons per day for all uses in the LVAB.

Order No. 1054 was signed by the State Engineer on March 23, 1992, stating that as of the date of the Order, applications filed to appropriate groundwater pursuant to NRS § 534.120 within the designated LVAB will be denied.

Amended Order No. 1054 was signed by the State Engineer on April 15, 1992, and added three exceptions to the original order. The Order held that with three exceptions that all applications filed after March 23, 1992, would be denied. The exceptions are: (1) applications filed for commercial or industrial purposes which seek to appropriate 1,800 gallons per day or less and where the property is zoned for such purpose shall be processed and subject to NRS Chapter 533 and 534; (2) Applications filed for the purpose of reinstating a permit that has been cancelled and where some use has been made of the water, will be processed according to NRS Chapter 533, but only for the uses that are existing; and (3) Applicants who began the process of filing an application before March 23, 1992, may file the applications which will be processed according to NRS chapter 533.

The State Engineer finds that new appropriations of underground water from the LVAB have been gradually regulated to a point where only those water right applications, which comply with the exceptions defined within State Engineer's Amended Order No. 1054 can be considered for approval. The State Engineer finds that Application 80388 was filed on January 7, 2011; therefore, the application is subject to denial under Amended Order No. 1054. The State Engineer finds the application is not requesting the reinstatement of water for the same use as under cancelled Permit 43821. The State Engineer finds even though Application 80388 requests an appropriation of less than 1,800 gallons per day for commercial purposes, there is another statutory provision that the State Engineer should consider.

III.

Nevada Revised Statute § 534.120(3)(b) provides that the State Engineer may deny applications to appropriate groundwater for any use in areas served by an entity such as a water district or municipality presently engaged in furnishing water to the inhabitants thereof. In allowing water to be appropriated under the first exception provided for under Amended Order No. 1054, the State Engineer has limited those new commercial and industrial appropriations to areas where water service is not or cannot be furnished by an entity such as a water district or municipality presently engaged in furnishing water to the inhabitants thereof. These new appropriations are issued with the caveat that when municipal water service is available and the

well requires deepening, reconditioning or replacement, the applicant must plug the well and connect to the municipal water service.

An examination of electronic waterline records (facility view) within the Office of the State Engineer finds that the City of North Las Vegas (CNLV) maintains a municipal water service line along East Cheyenne Avenue immediately in front of APN 140-16-103-002, which is the proposed place of use under Application 80388. CNLV was contacted to inquire if CNLV would or would not provide service to said parcel. By e-mail dated October 24, 2012, CNLV indicated that the water line along East Cheyenne Avenue was an 8-inch line and that water service was available to said parcel. The State Engineer finds that water service is available for APN 140-16-103-002 by an entity presently engaged in furnishing water to the area. The State Engineer finds that, since water service is available, a new appropriation of water for commercial purposes in such a highly regulated basin will not be allowed and Application 80388 will be denied.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

- 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 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, since water service is available for the proposed place of use under Application 80388, a new appropriation of groundwater under State Engineer's Amended Order No. 1054 should not be allowed. The State Engineer concludes that it would

⁴ NRS Chapters 533 and 534.

⁵ NRS § 533.370(2).

threaten to prove detrimental to the public interest to issue a permit in such a highly regulated groundwater basin when water is available from a water provider.

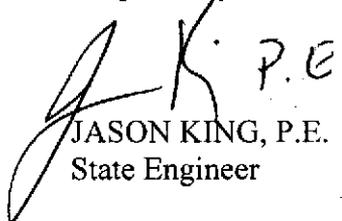
IV.

The State Engineer concludes that the existing well on APN 140-16-103-002 must be decommissioned and plugged pursuant to Nevada Administrative Code 534.427(3)(b)(6), unless the Applicant is able to obtain and transfer an existing non-revocable permitted water right into the well.

RULING

Application 80388 is hereby denied on the grounds its approval would threaten to prove detrimental to the public interest. The Applicant must decommission and plug the existing well on APN 140-16-103-002 or acquire an existing non-revocable permitted water right and file a change application to transfer said water into the well within one year from the date of this ruling.

Respectfully submitted,

 P.E.
JASON KING, P.E.
State Engineer

Dated this 29th day of
November, 2012.