

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

IN THE MATTER OF APPLICATION 84323 FILED)
TO CHANGE THE POINT OF DIVERSION AND)
PLACE OF USE OF THE PUBLIC WATERS, OF)
AN UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 68335 WITHIN)
THE PAHRUMP VALLEY HYDROGRAPHIC)
BASIN (162), NYE COUNTY, NEVADA.)

RULING

#6308

GENERAL

I.

Application 84323 was filed on September 11, 2014, by Keith Mark Gross IRA Rollover and Jeffery Gunter Rollover IRA to change the point of diversion and the place of use of 0.0032 cubic-feet per second (cfs), not to exceed 1.0 acre-foot of water for commercial purposes, previously appropriated under Permit 68335. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T.19S., R.53E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.20S., R.53E., M.D.B.&M. The proposed place of use is described as 4.8 acres within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T.19S., R.53E., M.D.B.&M., Nye County Assessor's parcel no. 028-249-09. The existing place of use is described as being located within a portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15 T.20S., R.53E., M.D.B.&M.¹

II.

Permit 68335 was issued on August 15, 2002, for 0.0032 cfs of water for commercial purposes. The point of diversion is located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.20S., R.53E. M.D.B.&M. The place of use is a commercial building, a donut shop, located within the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.20, R.53E., M.D.B.&M.²

FINDINGS OF FACT

I.

Since 1941, the State Engineer has issued numerous orders intended to manage declining groundwater levels of the Pahrump Valley Hydrographic Basin. In 1941, the State Engineer first

¹ File No. 84323, official records in the Office of the State Engineer.

² File No. 68335, official records in the Office of the State Engineer.

designated the basin pursuant to NRS § 534.030, as a groundwater basin in need of administration.³ In 1948, the boundary of the designated portion of the basin was extended,⁴ which was later extended again in 1953.⁵ Also in 1953, the State Engineer ordered the installation of measuring devices on all permitted wells, excluding domestic wells.⁶ In 1970, the State Engineer ordered that no further appropriations would be approved for irrigation purposes, and irrigation was excluded as a preferred use pursuant to NRS § 534.120.⁷

Order No. 955 issued in 1987 ordered that applications for all new appropriations would be denied, except for new appropriations for small commercial uses, off the alluvial fan requiring 5,000 gallons a day or less. The exception for new small commercial appropriations was declared a preferred use pursuant to NRS § 534.120.⁸

II.

In 1994, Order No. 1107 was issued, which, among other things, further limited the small commercial use exception to applications which sought to appropriate 1,800 gallons per day or less.⁹ The rationale for additionally limiting new small commercial appropriations to 1,800 gallons per day or less was that permits could be granted on parcels that had a domestic well exemption that was not being used, which could allow the domestic well exemption to be used for commercial purposes without creating an additional withdrawal on the groundwater resource. It was intended that if or when the commercial use ceased, the commercial right would be subject to cancellation or forfeiture, and the water would revert back to a domestic well exemption. By mid-2005, the Office of the State Engineer observed that the new small commercial appropriations were being exploited in a manner not intended by the State Engineer, including applicants filing change applications on existing small commercial rights and once the water rights were changed, making a subsequent filing for another new small commercial appropriation on the parcel from where the water right had just been moved. In addition, applications for new small commercial appropriations were filed to use the permit to relinquish a water right needed to subdivide a parcel(s) elsewhere. Actions such as these continued to create additional new appropriations in the basin despite the State Engineer's

³ Order No. 176, official records in the Office of the State Engineer.

⁴ Order No. 193, official records in the Office of the State Engineer.

⁵ Order No. 205, official records in the Office of the State Engineer.

⁶ Order No. 206, official records in the Office of the State Engineer.

⁷ Order No. 381, official records in the Office of the State Engineer.

⁸ Order No. 955, official records in the Office of the State Engineer.

⁹ Order No. 1107, official records in the Office of the State Engineer.

orders curtailing new appropriations. As a result, and to reinforce the domestic well connection, permit terms were introduced to make clear the intention that new small commercial appropriations were restricted to a specific place of use and that proposing changes of permits issued for new small commercial appropriations would be denied.¹⁰

III.

When filed in 2001, Application 68335 was filed as a new appropriation for 0.0032 cfs, not to exceed 1,800 gallons per day, for commercial use for a donut shop. In correspondence dated May 15, 2002, the Office of the State Engineer provided the Applicant at the time with a copy of Order No. 1107 in a request for fixture count at the place of use (*i.e.*, APN 35-321-02) to enable the State Engineer to estimate the amount of water to be used under Application 68355.¹¹ Permit 68335 was subsequently issued for 1.0 acre-foot on August 15, 2002, and the permit stated the appropriation was issued as a preferred use under NRS § 534.120(2). The State Engineer finds that the Applicant at the time was made aware of Order No. 1107 and that Permit 68335 falls squarely within the parameters of Order No. 1107 as a new small commercial appropriation.

IV.

The well log for the well serving as the point of diversion for Permit 68335 demonstrates that the well was initially designated as domestic well when it was drilled.¹² The State Engineer finds that this fact confirms that the approval of Permit 68335 as a new small commercial appropriation was intended to allow the permittee to use the domestic well exemption on the parcel while the well was not being used for domestic purposes.

V.

Application 84323 proposes to move water that was permitted as a new small commercial appropriation under Permit 68335, to another parcel, Nye County APN 028-249-09, where it is to be commingled with 6.5 acre-feet under Permit 84257 for a proposed RV Park. The State Engineer finds that Application 84323 is the very type of disfavored change application discussed above that the State Engineer has prohibited since 2005. The State Engineer finds that a request to change

¹⁰ See generally, *e.g.*, Permit 70809 (“Upon cessation of pumping for commercial purposes at this place of use, the water under this permit shall return to the groundwater source and no application to change will be allowed.”); Permit 77115 (*same permit term and also adding that no relinquishment would be allowed*).

¹¹ File No. 68335, correspondence dated May 15, 2002.

¹² Well Log No. 85837 (box 4), Nevada Division of Water Resources Well Log Database, official records in the Office of the State Engineer.

Permit 68335 is contrary to the intent of Order 1107, as it creates opportunities for the filing of another new small commercial application on the unused exempt domestic well, which, in turn, would create additional new appropriations in this over-appropriated basin. Accordingly, the State Engineer finds that the change requested by Application 84323 would conflict with existing rights and threaten to prove detrimental to the public interest.

VI.

Permit 68335 has been granted extensions of time for filing of the Proof of Beneficial Use since 2007. During that time, the permit has changed ownership several times from the original owner until the current ownership was confirmed in 2012. With this ruling, the current owners are accordingly put on notice that Permit 68335 must be put to beneficial use at the permitted place of use or Permit 68335 may be subject to cancellation. Any additional extensions of time filed on Permit 68335 will be closely scrutinized as to whether the owners have employed good faith and the steady application of effort to put the water to beneficial use under Permit 68335.¹³

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.¹⁴

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:¹⁵

- 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 the approval of Application 84323 would conflict with existing rights and that the proposed change threatens to prove detrimental to the public interest; therefore, Application 84323 must be denied.

¹³ NRS § 533.395(1).

¹⁴ NRS Chapters 533 and 534.

¹⁵ NRS § 533.370(2).

RULING

Application 84323 is hereby denied on the grounds that its approval would conflict with existing rights and threatens to prove detrimental to the public interest.

Respectfully submitted,

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

Dated this 14th day of
April, 2015.