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BEFORE THE LAS VEGAS DIVISION

OF WATER RESOURCES

IN THE MATTER OF:)

APPLICATION 29249)

Taken at 2501 East Sahara

Las Vegas, Nevada

Thursday, February 26, 1976

1:30 P. M.

PARTIAL TRANSCRIPT

Reported by: Kit MacDonald, C.S.R. #65

BROWER AND ASSOCIATES

Stenotype Reporters

LAS VEGAS, NEVADA 89101

1 Las Vegas, Nevada, Thursday, February 26, 1976, 1:30 p.m.

2

3 MR. WESTGARD: Is everyone present? We'll be back
4 in session.

5 I think one thing I should perhaps ask is,
6 if any of the parties would request the permission or
7 prerogative of filing and briefs or any further data or
8 information in this issue before us?

9 MR. BLACKMER: No.

10 MR. EMERSON: No, I don't think so.

11 MR. COLBURN: No.

12 MR. WESTGARD: Let the record indicate the three
13 parties of record all indicate in the negative.

14 I apologize for the delay in getting back.
15 If anything, I think that indicates the seriousness and
16 difficulty of our consideration of this situation. I had
17 contemplated perhaps a delay in time about rendering a
18 decision. I know that that very seldom ever works in
19 anyone's best interests.

20 The other assessment we had to make, or at
21 least I had to make, was whether further time, in my view,
22 could in any way affect the ultimate decision in this matter,
23 and again the conclusion I reached was a negative one. So,
24 it is my intent to rule on this matter based on the record
25 before me, and on the testimony presented here today.

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I would refer briefly to the couple of provisions of the statutes and I would not want to infer that these are the only limited statutes, the provisions of the water law in a broad scope and apply it to each individual situation, which we have done and are doing.

The statutes are quite specific under the provisions of NRS-533.335, about what is to constitute the content of an application for permit to appropriate water. There are also specific provisions of NRS-533.530, regarding supplemental data as may be prescribed by the State Engineer. I think, taking these two provisions together, not only gives the authority, but provides the obligation to weigh the merits of application and its specific contents against evidence presented in a subsequent hearing, such as the one today.

I'd also like to cite the provision of the Nevada Revised Statutes 533.370, specific which refers to the intent to place water to beneficial use.

Again, I would not want my interpretation of statutes to be restrictive by specific reference to that. The thrust, of course, of the intent of law is, to place water to beneficial use. The evidence today did not, in my opinion, provide a sufficient basis to rule on the specific contents of either of the protests. And I think that is pertinent. We are not today making a finding as to the

1 availability of water for appropriation in this specific
2 area on a temporary or permanent basis, because in my mind,
3 the testimony today was somewhat inadequate for me to make
4 that determination. I do feel, however, that there was
5 other material presented which necessitates a decision at
6 this time.

7 So, part of my ruling is, that I am, in fact,
8 not ruling on the merits of the two protests. Another
9 specific finding is that in the action and as the ruling
10 to be issued today, will in no way prejudice or in any way
11 take away from or diminish the prerogative of any of the
12 parties to pursue their particular position in this case,
13 in any way. Testimony by the representatives, particularly
14 of the Las Vegas Dunes, Incorporated, indicated that there
15 was, I think, considerable doubt in the determination as
16 to the quantities of water to be placed to beneficial use,
17 in the first instance. There was conflicting testimony as
18 to whether the water right, water applied if this permit
19 were issued, would be used on forty acres or two hundred
20 acres. Whether it would be used for four thousand trees,
21 something less than four thousand trees. Whether it would,
22 in fact, be used for quasi-municipal and domestic purposes
23 as set forth in the application, or whether the larger
24 percentage of the water would be used for irrigation purposes.
25 The testimony was, I think, pretty specific that it would be

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1 a family recreation-type complex.

2 There was some conflicting testimony that
3 that was not the specific approval that was inherent in the
4 City's granting of the variance. However, there was no
5 documentation in the form of affidavit to support either
6 position.

7 So, the only conclusion I can draw from that
8 is, that there is some as yet undetermined, you might say,
9 or finalized determination of the exact purposes for which
10 this water is to be used under this proposed appropriation.

11 Thirdly, and I think probably most signifi-
12 cantly, Mr. Emerson testified specifically that as of now,
13 the water, if this permit were issued, could not be placed
14 to beneficial use on the acreage described in this subject
15 application.

16 Considering all this, and with the reminder
17 that the two first parts of the ruling that the specific
18 provisions of protest have not been determined, the merits
19 have not been determined due to insufficient evidence.

20 Secondly, that the prerogative of refileing
21 correctly reflecting the proposal, accurately reflecting the
22 proposal, and documenting the proposal in a form of a new
23 application or as an application to change, is in no way to
24 be prejudiced by this determination.

25 It is my finding, based on the testimony

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here today and my interpretation of the statutes, that the applicant does not meet the criteria of being able to demonstrate how and how much, and on the acreage described on the application that water can be placed to beneficial use, and therefore, does not meet the criteria set forth.

On that basis, Application 29249 is denied.
And that concludes the hearing.

* * * * *

