

IN THE MATTER OF APPLICATION NO. 15923)
FILED BY THE LAS VEGAS HOUSING AUTHORITY)
ON DECEMBER 27, 1954 AND WHICH WAS : RULING
PROTESTED BY THE LAS VEGAS VALLEY WATER)
DISTRICT ON FEBRUARY 17, 1955.)

General:

Application No. 15923 was filed by the Las Vegas Housing Authority to appropriate 1.5 c.f.s. of water from the Las Vegas Artesian Basin for the purpose of using such water to serve the Kelso-Turner Terrace public housing tract. The purpose of the application is to provide cheaper water to the tract. This tract is within the city limits of Las Vegas and is being served water by the Las Vegas Valley Water District, successor to the Las Vegas Land & Water Company.

On May 17, 1955 a hearing was held in Las Vegas, Nevada, and although the hearing was not formally reported, notes were taken of the testimony by Miss Zena Barnum, an employee of the Housing Authority. Through the courtesy of the Housing Authority, these notes were made available to the State Engineer's Office and the Water District.

Briefs were submitted to the State Engineer by the attorneys representing the Housing Authority and the Water District.

The provisions of the general water laws (Chapter 140, Statutes of 1913 as amended), as well as the provisions of the ground-water laws (Chapter 178, Statutes of 1939 as amended) must be considered in acting upon applications within an area such as the Las Vegas Valley Artesian Basin.

Prior to the 1955 session of the legislature both the general water law (Sec. 63, Chap. 104, Stats. 1913 as amended) and the ground water law (Sec. 10, Chap. 178, Stats. 1939 as amended) provided that a permit to appropriate water could be issued only when there was unappropriated water in the source.

Section 63, Chapter 104, Statutes of 1913, as amended by Chap. 83, Stats. 1949, reads in part as follows:

"----. But where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest, it shall be the duty of the state engineer to reject said application and refuse to issue the permit asked for.-----" (underscoring ours).

Section 10, Chapter 178, Statutes of 1939 as amended, reads in part as follows:

"-----; he shall determine if there is unappropriated water in the area affected and shall issue permits only if such determination is affirmative.-----"
(underscoring ours)

Since the inception of the Office of State Engineer it has been the duty of the State Engineer in acting on applications to appropriate water to determine whether or not there was unappropriated water in the source applied for and whether or not the granting of a permit would prove detrimental to public interests.

During the year 1946 the estimated diversion of ground water within the Las Vegas Valley first exceeded the estimated average annual recharge of water to the basin. This determination was made by the United States Geological Survey, Ground-Water Branch, as the result of a comprehensive study made by that agency in cooperation with the State of Nevada during the period 1945-1948. The result of this study is documented in State of Nevada Water Resources Bulletin No. 5. On pages 94 and 95 of said report it is stated that in 1946 the estimated annual discharge from wells was 28,500 acre-feet and from springs within the valley, 3,200 acre-feet or a total of 31,700 acre-feet. In addition it is stated that possibly as much as 8,000 acre-feet of water is lost from the underground basin through fault zones and becomes near-surface water consumed by evaporation and transpiration. The actual discharge of water from the Las Vegas Valley Artesian Basin during 1946 could therefore have been as much as 37,000 acre-feet; whereas, according to the report, the average annual recharge to the ground-water reservoir in the Las Vegas Valley is between 30,000 and 35,000 acre-feet.

It was known, however, that there was a considerable amount of water in ground-water storage. The State Engineer determined that a portion of this water in storage could be placed to beneficial use without appreciable damage to the basin and existing rights, and granted permits accordingly. At all times the State Engineer recognized that the appropriation of the "storage water" would not be a permanent water right as it was only a question of time until the annual quantity of water diverted from the ground-water basin would have to be reduced to the average annual recharge.

Under the sponsorship of State Senator C. D. Baker, legislation was enacted in 1947 creating the Las Vegas Valley Water District (Chap. 167, Stats. 1947). The primary purpose of the District was to import water from Lake Mead into the rapidly growing Las Vegas Valley to replace the over-draft on the ground-water basin and to meet additional water supply needs. It was only due to the eventual importing of Lake Mead water into the Las Vegas area that the State Engineer was able to grant temporary permits to appropriate ground-water. During 1954 the State Engineer and the U.S.G.S. estimated that the water used in the Las Vegas Valley was about 47,300 acre-feet, the use exceeding the recharge by about 15,000 acre-feet. Since the yearly capacity of the Water District's line from Lake Mead

is 15,400 acre-feet, it is obvious that even with the District using Lake Mead water to the full capacity of the line, there is no surplus of water in the basin. The accelerated decline of the water levels during the past few years clearly indicates that a cut back in pumping will soon be mandatory. Until such time as a network of distribution water lines can be financed and laid, the future growth in outlying areas within the Las Vegas Valley will depend upon the availability and use of ground-water. As the distribution lines are extended the temporary permits will be revoked and the holders of such permits will have to connect to the District lines.

The State Engineer and the Las Vegas Valley Water District have entered into discussions for the purpose of reaching an understanding on a long-range plan aimed to assure sufficient water for development and at the same time reduce the over-draft on the ground-water basin. This can be accomplished for the time being by instituting conservation measures and by the District using the transmission line from Lake Mead to its capacity and reducing the use of ground-water to which the District is legally entitled.

In order to conserve water for the highest beneficial use, the State Engineer has for over two years granted permits on a temporary basis and only for municipal, quasi-municipal, domestic and industrial uses. As a necessary step in water conservation, the District is developing a program for installing meters throughout its service area. Other conservation steps, such as sealing leaking wells, are in operation and being developed.

In order to enable the State Engineer to grant permits to appropriate ground-water in such areas as the Las Vegas Valley, Section 10 of the ground-water law was amended by the 1955 legislature. In addition, the 1955 legislature added a new section, i.e. Sec. 10.5, which in part provided essentially the following:

1. In designated areas where the ground-water is being depleted, the State Engineer is empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area.
2. To designate preferred uses and grant permits to appropriate water for such preferred uses.
3. May issue temporary permits to appropriate ground-water, and which may be revoked when water can be furnished by an entity such as a Water District.
4. To deny applications to appropriate ground-water for any purpose in areas served by an entity.
5. Providing that for good and sufficient reason the State Engineer may except the provisions of this section with respect to public housing authorities.

The Las Vegas Housing Authority, applicant under Application No. 15923 contends that it should be subject to the last provision mentioned above, i.e., to be exempted from the provisions of Section 10.5 of the ground-water act (Chap. 212, Stats. 1955) so that water could be furnished cheaper to the tract than can be done by the District.

The matter of cost of water to the applicant is not an issue that can be considered by the State Engineer in making his ruling in this matter. Rather, the State Engineer must determine to the best of his ability whether or not the issuance of a permit under said Application No. 15923 is detrimental to the public welfare. If his determination is in the affirmative, then it is his mandatory duty to deny the application. If, on the other hand, the State Engineer finds that the granting of a permit would not be detrimental to the public welfare, then if good and sufficient reasons are present the State Engineer could grant a permit.

The policy of the State Engineer has been, and will continue to be that further ground-water development will be allowed only in those areas that cannot be served water by the District or by an entity legally engaged in distributing water. Such permits will be on a temporary basis and revokable when water is available for use from the District.

To now deviate from that policy and grant a permit under Application No. 15923 on the grounds that the applicant could obtain cheaper water would be to defeat the program that has been and is being developed by the State Engineer and the Las Vegas Valley Water District, and further would be contrary to the intent of the water law.

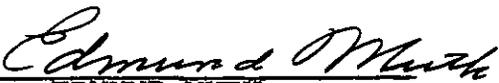
RULING

It is the opinion of the State Engineer that there is no good and sufficient reason to void the provisions of Section 10.5, Chapter 212, Statutes of 1955, as it relates to the Las Vegas Housing Authority. It is his further opinion that the granting of a permit under Application No. 15923 would prove detrimental to public interests and adverse to the rights of the Las Vegas Valley Water District. Therefore the protest of the Las Vegas Valley Water District is sustained and Application No. 15923 of the Las Vegas Housing Authority denied.

Respectfully submitted,

HUGH A. SHAMBERGER
State Engineer

By


EDMUND MUTH
Assistant State Engineer

Dated this 13th day
of December, 1955.