

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 49738)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE IN)
THE ELDORADO VALLEY GROUNDWATER)
BASIN IN CLARK COUNTY, NEVADA.)

RULING

GENERAL

Application 49738¹ was filed on February 27, 1986, by Frehner Construction Co., Inc. to appropriate 1.0 c.f.s. of water from an underground source for commercial purposes, i.e., gravel processing and possible hot baths, within the NE $\frac{1}{4}$ of Section 9, T.25S., R.63E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T.25S., R.63E., M.D.B.&M.

A request for a waiver to drill a temporary well for highway construction purposes was submitted on December 7, 1983, by Frehner Construction Company, Inc. Waiver C-005¹ was issued on December 8, 1983, under the provisions of NRS 534.030(3) to drill one construction well located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 9, T.25S., R.63E., M.D.B.&M.

A request to change the location of the well to the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, T.25S., R.63E., M.D.B.&M. was submitted on January 11, 1984.¹

The existing location of the well as described by well log No. 25274¹ is the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9, T.25S., R.63E., M.D.B.&M.

FINDINGS OF FACT

I.

A highway Easement Deed (Material Site)¹ signed March 26, 1984, deeded an easement further described as the NE $\frac{1}{4}$ Section 9, T.25S., R.63E., M.D.B.&M. to the State of Nevada, Department of Transportation, for use as a material site. The deed specifies that the deed "does not include the grant of any rights for non-highway purposes or facilities".² To date no deeds have been received transferring title from the Nevada

¹ Public information in the office of the State Engineer.

² Page 2 of 5, Highway Easement Deed, N-38183, Material Site CL10-4, SPF-095-1(3), E.A. 71100, filed April 23, 1984, in the Clark County Recorder's office.

Department of Transportation to any other public or private entity.

II.

The applicant under Application 49738 does not own or control the land described under the point of diversion and place of use of the application.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.³

II.

Application 49738 was filed to support a gravel operation. The land described by the deed under I of Findings lists the State of Nevada, Department of Transportation as the current owner of record, therefore, the applicant does not own or control the land described under the point of diversion and place of use of the application and cannot demonstrate the ability to place the water to beneficial use.

III.

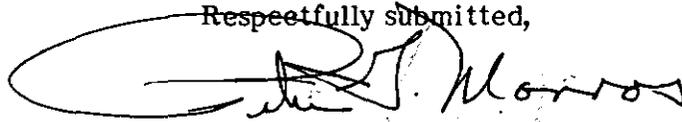
To grant an application to appropriate the public waters for commercial purposes on lands the applicant does not own or control or where the applicant cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

³ NRS Chapters 533 and 534.

RULING

Application 49738 is herewith denied on the grounds that to grant an application for commercial purposes on lands that the applicant does not own or control and cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", is written over a large, faint oval stamp.

PETER G. MORROS
State Engineer

PGM/SW/bk

Dated this 23rd day of

June, 1989.