

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

IN THE MATTER OF APPLICATION NUMBERS)
51146, 51147, 51148, 51149, 51150,)
51151, 51152, 51153, 51154 AND 51155)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE LOVELOCK VALLEY GROUND)
WATER BASIN IN CHURCHILL AND)
PERSHING COUNTIES, NEVADA.)

RULING

3893

GENERAL

I.

Application 51146 was filed on July 27, 1987, by Gabbs Hay Company (G.H.C.) to appropriate 6.0 c.f.s. of water from an underground source for municipal purposes within T.15N., R.19E., T.15N., R.20E., (Carson City, Eagle Valley); T.16N., R.19E., T.16N., R.20E., (Washoe Valley); T.17N., R.19E., (Slide Mt., N. Washoe Valley); T.17N., R.20E., (Portion N. Washoe Valley); T.18N., R.19E., (Whites, Thomas, Dry & Evans Creek Fans); T.18N., R.20E., (S. Truckee Meadows); T.19N., R.18E., (Verdi, Mogul, Lawton Areas); T.19N., R.19E., (Reno); T.19N., R.20E., (Reno, Sparks); T.20N., R.19E., (N. Reno, Black Springs, Golden Valley); T.20N., R.20E., (N. Sparks, Sun Valley, S. Spanish Springs Valley); T.21N., R.18E., (Cold Springs Valley, W. Lemmon Valley); T.21N., R.19E., (Lemmon Valley, Stead); T.21N., R.20E., (S. Hungry Valley, N. Spanish Springs Valley); M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 10, T.24N., R.29E., M.D.B.&M.¹

Application 51147 was filed on July 27, 1987, by Gabbs Hay Company (G.H.C.) to appropriate 6.0 c.f.s. of water from an underground source for municipal purposes within the same area described under Application 51146. The point of diversion is described as being within the NW1/4 NW1/4 Section 24, T.25N., R.29E., M.D.B.&M.¹

¹ Public Record in the office of the State Engineer.

Application 51148 was filed on July 27, 1987, by Gabbs Hay Company (G.H.C.) to appropriate 6.0 c.f.s. of water from an underground source for municipal purposes within the same area described under Application 51146. The point of diversion is described as being within the SE1/4 SE1/4 Section 2, T.24N., R.29E., M.D.B.&M.¹

Application 51149 was filed on July 27, 1987, by Gabbs Hay Company (G.H.C.) to appropriate 6.0 c.f.s. of water from an underground source for municipal purposes within the same area described under Application 51146. The point of diversion is described as being within the NW1/4 NW1/4 Section 14, T.24N., R.30E., M.D.B.&M.¹

Application 51150 was filed on July 27, 1987, by Gabbs Hay Company (G.H.C.) to appropriate 6.0 c.f.s. of water from an underground source for municipal purposes within the same area described under Application 51146. The point of diversion is described as being within the NW1/4 NW1/4 Section 11, T.24N., R.30E., M.D.B.&M.¹

Application 51151 was filed on July 27, 1987, by Gabbs Hay Company (G.H.C.) to appropriate 6.0 c.f.s. of water from an underground source for municipal purposes within within the same area described under Application 51146. The point of diversion is described as being within the SE1/4 SE1/4 Section 12, T.25N., R.29E., M.D.B.&M.¹

Application 51152 was filed on July 27, 1987, by Gabbs Hay Company (G.H.C.) to appropriate 6.0 c.f.s. of water from an underground source for municipal purposes within the same area described under Application 51146. The point of diversion is described as being within the NW1/4 NW1/4 Section 28, T.25N., R.31E., M.D.B.&M.¹

Application 51153 was filed on July 27, 1987, by Gabbs Hay Company (G.H.C.) to appropriate 6.0 c.f.s. of water from an underground source for municipal purposes within the same area described under Application 51146. The point of diversion is

described as being within the NW1/4 NW1/4 Section 22, T.25N., R.31E., M.D.B.&M.¹

Application 51154 was filed on July 27, 1987, by Gabbs Hay Company (G.H.C.) to appropriate 6.0 c.f.s. of water from an underground source for municipal purposes within the same area described under Application 51146. The point of diversion is described as being within the NW1/4 NW1/4 Section 14, T.25N., R.31E., M.D.B.&M.¹

Application 51155 was filed on July 27, 1987, by Gabbs Hay Company (G.H.C.) to appropriate 6.0 c.f.s. of water from an underground source for municipal purposes within the same area described under Application 51146. The point of diversion is described as being within the SW1/4 NW1/4 Section 12, T.25N., R.31E., M.D.B.&M.¹

Applications 51146, 51147, 51148, 51149, 51150 and 51151 were timely protested on September 21, 1987, by William A. Molini, Department of Wildlife on the following grounds:

The Humboldt Wildlife Management Area is a state managed wetland area which is comprised of three main units encompassed within a total of 36,370 acres of one of the four most important wetlands in Nevada. At normal or non-flood level, there is a maximum of 16,800 surface acres of water which require approximately 73,000 acre feet of water annually to meet the evapotranspiration losses.

From 1971 through 1985, there were an average of 2,247,800 duck use-days, 72,400 goose use-days, and 20,800 swan use-days for the migration period from mid-August through mid-January.

Since 1972, there have been an average of 492 breeding pairs of ducks recorded on the area of which redheads, cinnamon teal, ruddy ducks, and gadwall have been the principal species. Because of current low numbers of redheads in North America, they have been declared as sensitive species of special concern. The highest duck

breeding population occurred in 1977 when 1,049 pairs were observe(sic). Currently the goose breeding population is less than 5 pairs per year.

In addition to providing habitat for large numbers of waterfowl throughout the year, this area provides nesting and feeding areas for a significant population of nongame species. During the spring and summer months, birds such as black-crowned night and great blue herons, snowy and great white egrets, white-faced ibis, white pelicans, western grebes, avocets, and other marsh associated birds are found in good(sic) numbers on this area. During most years, several bald eagles winter at the wildlife management area and feed on the abundant birds and fish in the area.

Most, if not all, recreation use-days on the Humboldt Wildlife Management Area are directed towards waterfowl hunting. Since 1976, there have been an average of 2,722 hunter use-days with an estimated harvest of 4,363 ducks, 44 geese, 6 swans, and 36 coots from the wildlife management area.

Withdrawal of groundwater, as proposed through water rights applications 51146-51155, has the potential to negatively impact the Humboldt Wildlife Management Area and to reduce its capacity to support waterfowl and other wildlife species and attendant recreational use.

Therefore, the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

Applications 51147, 51151, 51152, 51153, 51154 and 51155 were timely protested on January 13, 1988, by Marian A. McClellan on the following grounds:

Please be advised that on behalf of Pershing County, Nevada, as the elected representatives of the people of Pershing County, Nevada, we hereby wish to file a protest with regard to the above-referenced water application.

The basis of that protest is, to date, the Pershing County Commissioners and the people of Pershing County have not been supplied with sufficient data to fully understand the impact of this application on the future water situation of Pershing County.

It would appear that this application would be for the purpose of transferring water out of Pershing County to more populated areas. We have been unable to obtain from your office or any other agency any type of understanding with regard to the size of the underground resources in the Humboldt Sink area. We further have been provided no information that would show if this would in anyway cause a detriment to the existing farm lands, the wetlands or upstream sources of water in Pershing County. More importantly, there is absolutely no way for us to determine the adverse impact this might cause on generations to come. Without that full understanding, the only logical position we can take on behalf of the people of Pershing County is to protest this application until such time as studies can be done that will give us a clear picture on this impact. At such time then we could intelligently determine the best position with regard to the citizens of our county.

Thank you for reviewing our protest and considering it together with all other matters in this application.

Therefore, the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

Applications 51147, 51151, 51152, 51153, 51154 and 51155 were timely protested on January 21, 1988, by Keith E. Hemp on the following grounds:

The Lovelock Meadows Water District was formed a few years ago in order to provide culinary water to Lovelock and the surrounding area. The water district feels that if any water is to be diverted and exported from the Lovelock area that it should only be done after it has been determined

that such exportation of water will not resort in material damage to the citizens of Pershing County and the water district.

Secondly, any such exportation of water should be done as a commercial enterprise that would benefit the citizens of Pershing County being subject to fees or some compensation to the county from which the water originated.

Finally the water district believes that there is insufficient data to show how the County would be effected if such water is exported to a more populated area. For example, sometime in the future there could be an insufficient water supply for the citizens of Pershing County.

For these reasons the Lovelock Meadows Water District wishes to file a grievance regarding this application.

Therefore, the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

FINDINGS OF FACT

I.

The State Engineer finds that the combination of Applications 51146 through 51155 constitutes a fairly large project in that it is attempting to appropriate approximately 20,000 acre feet of water from 10 wells for municipal use in every populated area in Western Nevada.¹

II.

The State Engineer finds that this project constitutes a trans-county, trans-basin diversion.¹ The State Engineer satisfied the requirements in NRS 533.363 by sending copies of the applications and supporting maps to the county of origin (Pershing) and the counties of destination of the water (Churchill, Lyon, Washoe and Carson City). Recommendations received from Churchill County, Washoe County and Lyon County all recommended denial of the applications. No recommendation was received from Carson City.

III.

By certified letter dated February 25, 1992² the State Engineer requested information regarding the applications which included:³

1. Costs and benefits of the project.
2. Financial feasibility of the project.
3. How project would be financed.

The State Engineer gave the applicants 90 days to supply the required information.

IV.

The State Engineer received a letter from Walters Engineering dated May 21, 1992, outlining the total capital costs to be \$94,342,860. The project was reported to be profitable if they could sell the water on the Washoe Front for \$3.50/1000 gallons. The financial ability of the applicant to provide and to develop the project was to be received under separate cover from Mr. Porteous. No additional information has been received.

V.

Copies of letters from consultants in the file indicate a bid to study the water availability and water quality would be \$108,000 for Phase I and \$465,000 for Phase II.⁴

VI.

A letter from the applicant to Washoe County dated September 19, 1989 states that the project may cost as much as \$250 million.¹

² See return receipt #P 680 490 839.

³ NRS 533.375.

⁴ See letter in public record of State Engineers office under Application 51146 from Kenneth D. Schmidt and Associates dated December 28, 1988.

VII.

The State Engineer finds no information in the record that indicate that the applicant ever began studies to determine whether the water is available, the cost to capture it, nor whether there is a potential buyer for the water.¹

VIII.

The State Engineer finds no information in the record to indicate the applicant has the financial ability to carry out the proposed work and put the water to beneficial use.^{1,5}

IX.

The State Engineer finds that there is insufficient information to demonstrate that the applicant has filed the applications in good faith. Additionally, the applicant has not demonstrated the financial feasibility and benefits of the proposed project.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁶

⁵ NRS 533.375(2).

⁶ NRS Chapter 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where⁷:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

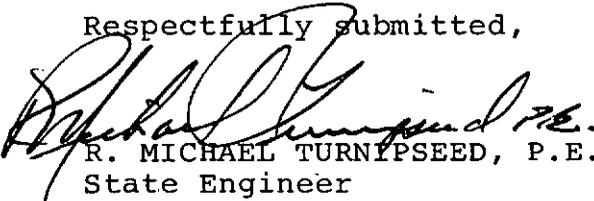
III.

The State Engineer concludes that it would not be in the public interest to approve the applications.

RULING

Applications 51146, 51147, 51148, 51149, 51150, 51151, 51152, 51153, 51154 and 51155 are hereby denied on the grounds that it would not be in the public interest to approve applications based on the information and financial data available to the State Engineer. No ruling is made on the protests.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/pm

Dated this 26th day of
June, 1992.

⁷ NRS Chapter 533.370