

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

IN THE MATTER OF APPLICATION 54393 AND)  
APPLICATION 54394 FILED TO CHANGE THE )  
MANNER OF USE OF THE UNDERGROUND )  
WATERS HERETOFORE APPROPRIATED UNDER )  
PERMIT 48525 AND PERMIT 42337, )  
RESPECTIVELY, WITHIN THE TRACY SEGMENT)  
GROUNDWATER BASIN, WASHOE COUNTY, )  
NEVADA. )

RULING

# 3956

GENERAL

I.

Application 54393 and Application 54394 were filed on January 30, 1990, by Steven S. Goodall, to change the manner of use of the underground waters heretofore appropriated under Permit 48525 and Permit 42337, respectively. The proposed manner of use is for quasi-municipal purposes, more specifically, the water is to service the proposed Reno International Raceway Complex, located within portions of Section 31 and Section 32, T.20N., R.22E., M.D.B.&M. The existing manner of use under the respective base rights, Permit 48525 and Permit 42337, is for quasi-municipal and domestic purposes, more specifically, the water was to service 1200 homes within the aforementioned place of use.<sup>1</sup>

II.

Applications 54393 and 54394 were timely protested by Sister Margaret McCarran on May 22, 1990. Sister McCarran's protest addressed her concerns over the negative impacts the proposed race complex would create upon the quality of life within the vicinity of the project. In addition, the protestant maintains that the proposed change in the manner of use from 1200 homes to the proposed raceway represents a further noncompliance with the

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<sup>1</sup> Public records of the State Engineer's office filed under Application 54393 and Application 54394.

covenant under which the ownership of the lands within the proposed place of use were transferred from Sister McCarran to the original developer.<sup>2</sup>

III.

Applications 54393 and 54394 were timely protested by Bruce R. Hansen and Claudia A. Hansen on May 22, 1990 on the following grounds in part;

The proposed manner of use would utilize water in a manner which would create a detrimental effect upon the protestant's existing domestic well. Additionally, water resources within the project area are incapable of providing sufficient water to supply the proposed racetrack and supporting facilities.<sup>3</sup>

IV.

Applications 54393 and 54394 were timely protested by David and Juanita Cox on May 30, 1990 on the grounds that, "There isn't enough annual recharge in the entire canyon area to support this much water usage."<sup>4</sup>

FINDINGS OF FACT

I.

Applications to change 54393 and 54394 do not constitute a request for new appropriations of water, but rather seek to change the manner of use of existing rights.<sup>5</sup>

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<sup>2</sup> State's Exhibit No. 6 in evidence at the hearing held before the State Engineer on April 30, 1992, hereinafter referred to as Exhibit or Transcript.

<sup>3</sup> State's Exhibit No. 4.

<sup>4</sup> State's Exhibit No. 5.

<sup>5</sup> State's Exhibits No. 2 and No. 3.

**II.**

The base right under the subject change applications were issued under the term which allows for a reasonable lowering of the static groundwater level.<sup>6</sup>

**III.**

The Hansen's domestic well is situated approximately 2000 feet easterly of the applicants nearest point of diversion under Application 54394, and approximately 2600 feet easterly of the point of diversion under Application 54393.<sup>7</sup>

**IV.**

The State Engineer finds that the subject of the enforcement of land development guidelines established under a specific covenant between a grantor and grantee is beyond the scope of the State Engineer's statutory authority to adjudicate.<sup>8</sup>

**V.**

The State Engineer finds that the estimated potential recharge of the Tracy Segment Groundwater Basin is 6,000 acre-feet per year.<sup>9</sup>

**VI.**

Based upon information and records available in the office of the State Engineer, existing and pending underground water rights, including the subject applications within the Tracy Segment Groundwater Basin total approximately 4950 acre-feet annually.<sup>10</sup>

**VII.**

After proper notice was given to all interested parties, an administrative hearing was held before representatives of the

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<sup>6</sup> Public records of the State Engineer's office under Permit 48525 and Permit 42337.

<sup>7</sup> Applicant's Exhibit No. 21, page 16.

<sup>8</sup> NRS Chapters 533 and 534.

<sup>9</sup> Water Resources Reconnaissance Series Report No. 57.

<sup>10</sup> Public records in the State Engineer's office.

State Engineer on April 30, 1992, to provide the protestants and the applicant a full opportunity to present evidence and testimony in support of their respective positions.<sup>11</sup>

VIII.

Although Sister McCarran currently holds several active water rights within the vicinity of the project, the majority of her testimony was directed towards the projects negative impacts upon the Truckee River corridor near the McCarran Ranch. These impacts will allegedly be in the areas of land use issues, such as the increased traffic and congestion generated during racing events.<sup>12</sup> The State Engineer finds that there are jurisdictions in local government to deal with these issues and that they are also beyond the scope of the State Engineer's statutory authority to adjudicate.<sup>8</sup>

IX.

Expert testimony on behalf of the applicant, revealed that the drawdown effect attributed to the subject applications upon the Hansen's domestic well will be on the order of 12 to 25 feet.<sup>13</sup> The State Engineer finds that additional testimony and evidence on the applicants behalf, reveals that the applicant is aware of the potential for water level decline within the Hansen's well and is willing to mitigate any adverse impacts associated with the lowering of pumping levels and increased operating costs.<sup>14</sup>

X.

The State Engineer finds that it is in the public interest to put this water to beneficial use. The base rights, Permit 42337 and Permit 48525 were issued on September 2, 1981 and April 16, 1985, respectively for quasi-municipal use, with little or no

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<sup>11</sup> Transcript, page 3.

<sup>12</sup> Transcript, pages 37-45.

<sup>13</sup> Testimony of Chris Mahanna, Transcript, pages 95-97.

<sup>14</sup> Transcript, pages 23-24, Applicant's Exhibit 21, page 8.

progress made in placing their respective appropriations to beneficial use, with Permit 48525 being granted six extensions of time for filing the required proof of completion and five extensions of time for filing the proof of beneficial use.<sup>15</sup> The State Engineer further finds that if the water cannot be put to beneficial use under the base rights, it is in the public interest to change the manner of use to allow beneficial use of the water.

#### CONCLUSIONS

##### I.

The State Engineer has jurisdiction of the parties and subject matter of this action.<sup>16</sup>

##### II.

The State Engineer is prohibited from approving an application to change the manner of use if the proposed change:<sup>17</sup>

- A. Conflicts with existing rights on the source, or
- B. Threatens to prove detrimental to the public interest.

##### III.

The subject applications are applications to change existing permitted rights with annual duties limited to the amount granted under the base permits, and are not requests for additional appropriations. The State Engineer concludes that the question of additional appropriation of water expanded beyond the base right duties at the proposed source is not an issue.

##### IV.

The State Engineer's responsibilities as defined within Nevada Revised Statutes do not include the enforcement of land use covenant between grantors and grantees.

##### V.

The State Engineer concludes that the granting of Application 54393 and Application 54394 will result in a drawdown

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<sup>15</sup> Public records of the State Engineer's office under Permits 42337 and 48525.

<sup>16</sup> NRS Chapter 533 and 534.

<sup>17</sup> NRS 533.370.

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of less than 25 feet in the Hansen's domestic well, and that this constitutes a reasonable lowering of the water level as described in NRS 534.110(4).

VI.

The State Engineer concludes that the granting of Application 54393 and Application 54394 will not impair existing rights nor be detrimental to the public interest.

RULING

The protests to the granting of Application 54393 and Application 54394 are hereby overruled, and Application 54393 and Application 54394 are hereby approved subject to existing rights specifically those rights in the Hansen domestic well and payment of the statutory permit fees.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MB/pm

Dated this 13th day of  
April, 1993.