

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

IN THE MATTER OF APPLICATIONS 57626,)
57627 AND 57628 TO APPROPRIATE THE)
PUBLIC WATERS OF THE STATE OF NEVADA)
FROM AN UNDERGROUND SOURCE WITHIN THE)
LAS VEGAS BASIN, CLARK COUNTY, NEVADA.)

RULING

4066

GENERAL

I.

Application 57626 was filed by Roberta Schoenfeldt on May 7, 1992, to appropriate 0.1 cfs from an underground source for quasi-municipal purposes within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.19S., R.60E., M.D.B.&M.¹ The proposed point of diversion is described as being in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.19S., R.60E., M.D.B.&M., which is located within the Las Vegas Basin.

II.

Application 57627 was filed by Roberta Schoenfeldt on May 7, 1992, to appropriate 0.1 cfs from an underground source for quasi-municipal purposes within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.19S., R.60E., M.D.B.&M.² The proposed point of diversion is described as being in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.19S., R.60E., M.D.B.&M., which is located within the Las Vegas Basin.

III.

Application 57628 was filed by Roberta Schoenfeldt on May 7, 1992, to appropriate 0.1 cfs from an underground source for quasi-municipal purposes within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.19S., R.60E., M.D.B.&M.³ The proposed point of diversion is described as being in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.19S., R.60E., M.D.B.&M., which is located within the Las Vegas Basin.

IV.

Maps were filed in support of applications 57626 and 57628 on August 10, 1992, prepared by Mr. Brent Ross Woolsey, Water Right Surveyor License No. 492, which depicted the proposed places of use

¹ Public records of the State Engineer, Application 57626.

² Public records of the State Engineer, Application 57627.

³ Public records of the State Engineer, Application 57628.

and points of diversion. The jurat on the map indicated that the surveys were conducted on April 29, 1992 and the maps were stamped, signed and dated August 7, 1992.⁴

V.

A map in support of application 57627 was filed on August 10, 1992, prepared by Mr. Brent Ross Woolsey, Water Right Surveyor License No. 492, which depicted the proposed place of use and point of diversion. The jurat on the map did not indicate the date the survey was conducted, however, the map was stamped, signed and dated August 7, 1992.⁵

VI.

Under NRS 533.375, the State Engineer may require additional information before approval or rejection of an application.⁶

VII.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held before the State Engineer in the matter of Applications 57626, 57627 and 57628 on May 6, 1993, at the Southern Nevada Branch Office of the State Engineer, Las Vegas, Nevada.⁷ Evidence and testimony were received into the record at the hearing and the State Engineer took administrative notice of various matters as more specifically set forth herein. Transcripts of the hearing are a matter of public record in the office of the State Engineer.⁸

VIII.

For purposes of this ruling and clarification, the State Engineer's Office and the Division of Water Resources are one and

⁴ Public records of the State Engineer, Applications 57626 and 57628.

⁵ Public records of the State Engineer, Application 57627.

⁶ NRS 533.375.

⁷ Public record of the State Engineer. State Exhibit No. 1 of the Transcript of Hearing before the State Engineer, May 6, 1993. Hereafter called Transcript.

⁸ Transcript from May 6, 1993.

the same. Also, Las Vegas Basin and Las Vegas Artesian Basin are one and the same.

IX.

The State Engineer's issuance of Amended Order No. 1054 was the last in a long-line of orders which progressively limited ground water pumping within the Las Vegas Basin. The State Engineer discontinued granting non-revocable groundwater permits during the 1950's, and only through Legislative enactment in 1955, did the State Engineer gain the authority to approve revocable permits in the Las Vegas Basin. Without Colorado River water as the alternative source for eventually meeting the water needs served by revocable permits, such groundwater permits could not have been granted. In Order No. 1021, signed on March 2, 1990, the State Engineer limited the approval of new revocable groundwater permits to a maximum of 4,000 gallons per day.

On March 23, 1992, the State Engineer issued Order No. 1054, providing that "[a]s of the date of this Order, applications filed to appropriate groundwater pursuant to NRS 534.120 within the designated Las Vegas Artesian Basin will be denied." A recently completed Final Project Report, Subsidence in Las Vegas Valley, 1980-91, ("Subsidence Report") by the Nevada Bureau of Mines and Geology, in part, provided the impetus for Order No. 1054.

The Executive Summary of the Subsidence Report noted that the "greatest subsidence hazard is posed by the occurrence and continued growth of earth fissures." The Executive Summary also identified the cause of land subsidence, stating as follows:

Land subsidence will continue to occur in Las Vegas Valley as long as the net annual groundwater withdrawal continues to exceed the net annual recharge. For the 1980-91 period, net withdrawals have exceeded recharge by factors of 2 to 3. In order to moderate or eliminate the effects of subsidence, the withdrawal-to-recharge ratio must be reduced either by reducing pumping or by artificially increasing recharge. Importation of surface water is the most direct means of reducing or arresting subsidence. Subsidence may continue for years after equilibrium is achieved because of a lag in sediment response.

In Order No. 1054, the State Engineer recognized the previous approvals of approximately 19,000 acre feet of revocable

groundwater permits in the Las Vegas Basin. These permits are "subject to revocation when Colorado River water is made available through the utilities utilizing Colorado River water." The State Engineer further recognized that "full commitment of Nevada's allocation of Colorado River water will occur in the near future[.]" Given the land subsidence problems created by continuing declines in groundwater levels and the existing commitments for Colorado River water, the State Engineer ordered that applications to appropriate groundwater filed after March 23, 1992, be denied.

FINDINGS OF FACT

I.

The State Engineer in his administrative capacity is herewith empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved.⁹

II.

A summary of the Orders signed by the State Engineer for the Las Vegas Basin are as follows:¹⁰

Order No. 175 was signed by the State Engineer March 10, 1941, designating a portion of the Las Vegas Valley Basin.

Order No. 182 was signed by the State Engineer on February 29, 1944, extending the designated portion of Las Vegas Valley Basin.

Order No. 189 was signed by the State Engineer on November 22, 1946, extending the designated portion of Las Vegas Valley Basin.

Order No. 196 was signed by the State Engineer on December 1, 1949, curtailing irrigation use in the Las Vegas Valley Basin.

Order No. 212 was signed by the State Engineer on November 20, 1953, regulating quasi-municipal allocations in the Las Vegas Valley Basin.

The 1955 Nevada State Legislature enacted Senate Bill No. 104 which allowed the State Engineer to issue temporary permits to appropriate groundwater which may be revoked when water

⁹ NRS 534.120.

¹⁰ Public records of the State Engineer.

service can be furnished by an entity such as a water district or a municipality engaged in furnishing water.

Order No. 249 was signed by the State Engineer on April 18, 1961, extending the designated portion of Las Vegas Valley Basin.

Order No. 275 was signed by the State Engineer on May 25, 1964, extending the designated portion of Las Vegas Valley Basin.

Order No. 833 was signed by the State Engineer on December 27, 1983, whereby the remaining portion of Las Vegas Valley Basin was designated.

Order No. 1021 was signed by the State Engineer on March 2, 1990, limiting appropriations to a maximum of 4000 gallons per day for all uses in Las Vegas Valley Basin.

Order No. 1054 was signed by the State Engineer on March 23, 1992, stating that as of the date of the Order applications filed to appropriate groundwater pursuant to NRS 534.120 within the designated Las Vegas Artesian Basin will be denied.

III.

The State Engineer held an Administrative Hearing on April 13, 1992 in Las Vegas to receive public testimony concerning any modification to Order No. 1054.

IV.

Amended Order 1054 was signed by the State Engineer on April 15, 1992 in which three (3) exceptions to original Order No. 1054 were outlined. Exception number 3 on page 3, of Amended Order 1054 specifically stated:

"Applicants who began the process of filing an application before March 23, 1992, may file the application which will be processed according to NRS Chapter 533. The applicant must demonstrate that the process began before March 23, 1992 by attaching a copy of a contract or agreement with a licensed water right surveyor. The application and copy of the contract must be received in the office of the State Engineer no later than 5:00 p.m., May 1, 1992.¹¹

V.

Applications 57626, 57627 and 57628 were accepted as being timely received in the main office of the State Engineer even

¹¹ Public records of the State Engineer.

though they were not filed in said office until May 7, 1992. This exception was made since the applications were stamped received by the Southern Nevada Branch Office of the State Engineer on May 1, 1992 and the shipping package was postmarked May 1, 1992.

VI:

Evidence establishes that the actual survey for Applications 57626 and 57628 were conducted April 29, 1992 with the maps being stamped and signed on August 7, 1992,¹² approximately four and one half months after Order No. 1054 was executed.

VII.

Evidence does not establish a date the actual survey was conducted for Application 57627. However, it was established that the map was stamped and signed on August 7, 1992,¹³ approximately four and one half months after Order No. 1054 was executed.

VIII.

Testimony and evidence establish that the proposed place of use of Application 57626 is approximately 2.5 acres, being a portion of an existing 5.84 net acre parcel. Furthermore, testimony established that no parcel map or land division are pending or have been filed on any portion of the existing parcel in order to legally create the parcel represented in the application.¹⁴

IX.

Testimony and evidence establish that the proposed place of use of Application 57627 is approximately 2.5 acres, being a portion of an existing 5.84 net acre parcel. Testimony establishes that no parcel map or land division are pending or have been filed on any portion of the existing parcel in order to legally create the parcel represented in the application.¹⁵

¹² Public records of the State Engineer, Applications 57626, 57627 and 57628.

¹³ Public records of the State Engineer, Application 57627.

¹⁴ Transcript from May 6, 1993.

¹⁵ Transcript from May 6, 1993.

X.

Testimony and evidence establish that the proposed place of use of Application 57628 is approximately 2.5 acres, being a portion of an existing 5.84 net acre parcel. Testimony establishes that no parcel map or land division are pending or have been filed on any portion of the existing parcel in order to legally create the parcel represented in the application.¹⁶

XI.

The record indicates that Mr. Farrimond, who appeared at the administrative hearing on behalf of the applicant is not a licensed water right surveyor. However, contracts submitted indicate a partnership with Brent Ross Woolsey as the water right surveyor.¹⁷ Mr. Brent Ross Woolsey, who is a licensed Water Right Surveyor did not appear at the hearing and other than the submitted contracts, Mr. Woolsey offered no verbal or written testimony with regards to Applications 57626, 57627 and 57628.

XII.

The submitted contracts were stamped and signed by notary public Barbara Morthland.¹⁸ Each application was addressed by a separate contract which stated the price as \$4,000.00, half of which was to be paid prior to the commencement of any work. The contracts were all dated January 15, 1992.

XIII.

The record was left open for a two (2) week period to allow the applicant or applicant's agent time to submit any documentation in the way of cancelled checks, receipts or cashier's receipts. Specifically requested, was any evidence to indicate that money changed hands between the applicant and Mr. Farrimond or Mr. Woolsey for initiating the water rights process prior to March 23,

¹⁶ Transcript from May 6, 1993.

¹⁷ Transcript from May 6, 1993.

¹⁸ Transcript from May 6, 1993.

1992.¹⁹ This information was needed in order to establish that the contracts for filing for the water rights were valid.

XIV.

Mr. Farrimond testified that payment was received in January of 1992, from Mr. Rex Jarrett, Jr. However, in documentation submitted by Mr. Jarrett, Jr. following the hearing, he stated, that he remembered meeting Mr. Farrimond at the bank to pay him \$800.00 in cash on March 16, 1992, fifty nine (59) days after the agreements were said to be executed. A copy of a safe deposit box withdrawal in the name of Rex Jarrett, Jr. indicated that there was a withdrawal of some kind done on March 16, 1992. In a letter dated May 19, 1993, Mr. Rex Jarrett, Jr. indicated that he decided not to pay more than \$800.00 in advance to do the work. He further stated that \$3,200.00 was paid on May 1, 1992. A copy of a check for \$3,200.00 dated May 1, 1992 was submitted to this office. However the check indicates it was issued for payment of the water right applications fees and not for work initiated prior to March 23, 1992. No receipt was submitted by Mr. Farrimond for the \$800.00 in cash, nor is there any documentation indicating there was a transfer of monies between Mr. Farrimond and Mr. Woolsey, the water right surveyor doing the actual water right work for Mr. Jarrett, Jr.

XV.

Additional documents were submitted to the State Engineer's Office by the applicant within the stated two (2) week period. However, none of the documents submitted indicate that any fees were paid to, or received by, a licensed water right surveyor prior to March 23, 1992 to initiate the water rights process as required by Amended Order No. 1054.²⁰

XVI.

The testimony and exhibits submitted by the applicant addressed the intent of the applicant to develop the property at some point in time. However, the evidence submitted concerns

¹⁹ Transcript from May 6, 1993.

²⁰ Public records of the State Engineer.

attempts to secure water service from the City of North Las Vegas which apparently was never resolved.

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.²¹

II.

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

- 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.²²

III.

Exception Number 3 of Amended Order 1054 was included for the purpose of allowing applications to be accepted as timely filed, if they were nearly ready to be filed on March 23, 1992, and the water application needed to be filed at that time. Since water permits were routinely issued for four lots prior to March 23, 1992, water applications were only filed at the time that they were needed to complete the parcelling process. The short timeframe from April 15, 1992 (the date Amended Order 1054 was issued) to May 1, 1992 (the final day applications would be accepted as timely filed) was intended to allow the water right surveyors time to complete work they had already begun. The requirement that a contract or agreement be submitted along with the application was envisioned as a means of assuring that the process of applying for the water right had begun before March 23, 1992.

IV.

The proposed places of use of Applications 57626, 57627 and 57628 are part of a 5.84 net acre parcel which has not been parcelled down to the one-half acre lots represented in the

²¹ NRS 533 and 534.

²² NRS 533.370.

respective applications. To have begun the application for water to serve the four lots within the 2.5 acre parcel prior to the creation of that parcel would have been premature. In order to create the 2.5 acre parcel, the 5.84 net acres of land would have to be parcelled at least once. A second parcelling of the subject land would have to occur before finally arriving at the size lots represented in the applications. For all but the last parcelling, a water right is not required.

V.

Exhibits three through seven inclusive, submitted by Mr. Jarrett, Jr. are appurtenant to Assessor Parcel number 1D-810-010. Parcel number 1D-810-010 is the proposed place of use of Applications 57633, 57634 and 57635. Therefore, exhibits three through seven inclusive have no bearing in the ruling of Applications 57626, 57627 and 57628.

VI.

The applicant failed to show evidence that the water rights process had begun with a licensed water right surveyor prior to March 23, 1992, as required by Amended Order No. 1054. Contracts dated January 15, 1992, were submitted indicating that work was to be initiated prior to March 23, 1992. However, the applicant did not submit any evidence that the contracts were valid. The contracts required a deposit of \$2,000.00 per contract, or a total of \$6,000.00 was to be paid prior to the commencement of any work. There was no evidence submitted showing any payment of funds were made prior to March 23, 1992. Therefore, the State Engineer concludes that the contracts were not valid for the purpose of demonstrating that the water right process had begun prior to March 23, 1993.

VII.

A domestic well as outlined in NRS 534.180, which does not require a permit, can supply the domestic needs of the undeveloped 5.84 net acre parcel in its present state.

VIII.

Exception No. 3 of Amended Order 1054 was specifically included to allow the filing of applications which were in the process of being completed prior to March 23, 1992. The applicants or agents for Applications 57626, 57627 and 57628 failed to demonstrate that the water right process had begun prior to March 23, 1992 and, therefore, do not meet the exception.

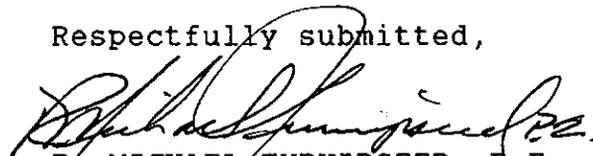
IX.

The granting of Applications 57626, 57627 and 57628 would be additional appropriations, which would further aggravate the basin-wide overdraft and declining static water levels, and thus conflict with existing rights and are detrimental to the public interest.

RULING

Applications 57626, 57627 and 57628 are herewith DENIED on the grounds that said applications do not meet any of the exemptions as outlined in Amended Order No. 1054. The appropriation of underground water for quasi-municipal and domestic purposes, as applied for, would conflict with and impair existing rights and be detrimental to the public interest and welfare.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/RC/pm

Dated this 23rd day of
December, 1993.