

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

IN THE MATTER OF APPLICATION 61194)
FILED TO APPROPRIATE THE PUBLIC)
WATERS FROM AN UNDERGROUND SOURCE)
WITHIN IVANPAH VALLEY (NORTHERN)
PART) GROUNDWATER BASIN (164A),)
CLARK COUNTY, NEVADA.)

RULING

4404

GENERAL

I.

Application 61194 was filed on May 1, 1995, by the Dorothy Arquilla Reversionary Trust to appropriate 0.5 cubic feet per second (cfs), not to exceed 3.4 acre-feet annually (afa) of water from the underground waters of the Ivanpah Valley (Northern Part) Groundwater Basin, Clark County, Nevada, for commercial purposes within NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 8, T.27S., R.59E., M.D.B.&M. The point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 8.¹

On July 23, 1996, Application 61194 was assigned to the Neuenkirch Family Trust.¹

II.

Application 61194 was timely protested by Gary Primm/Whiskey Pete's Casino on the following grounds:

Protestant is the owner of Permits 50701, 50808, 51870, 51871, 51872, 51873, 52087, 52088, 52685, 52686, and 52687 to appropriate and use underground water within the Nevada and California Ivanpah Basin. The state engineer has rejected past applications by the Protestant to appropriate additional water on the grounds that the basin is over-appropriated. To make contrary determinations at this time could be highly inequitable. Additionally, Application 61194 would conflict with Protestant's existing rights by reducing the quantity and quality of water available in the Ivanpah Basin.¹

III.

The State Engineer initially described and designated the Ivanpah Valley Groundwater Basin on March 11, 1941, under the provisions of NRS 534.030, as a basin in need of additional administration, and further declaring irrigation to be a non-

¹File No. 61194, official records in the Office of the State Engineer.

preferred use of water in the groundwater basin.² The point of diversion under Application 61194 is within the designated area described as the Ivanpah Valley Groundwater Basin (Northern Part).

IV.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held in Las Vegas, Nevada, before representatives of the Office of the State Engineer on May 28, 1996, with regard to the protest to Application 61194.³

FINDINGS OF FACT

I.

The Legislature has provided that in the interest of the public welfare, the State Engineer is authorized and directed to designate preferred uses of water within the respective areas so designated and from which the groundwater is being depleted, and in acting on applications the State Engineer may designate such preferred uses of the groundwater.⁴ The State Engineer finds that Application 61194 is for a preferred use of water in a designated groundwater basin and for a minimal quantity of water.

II.

The place of use under Application 61194 is three acres. If the applicant were to parcel that land into three one-acre residential lots the law would allow three domestic wells limited to 1,800 gallons per day each, for a total of 6.06 acre-feet per year.⁵ The State Engineer finds that Application 61194 is for a preferred use of water in a designated groundwater basin and is for 3.4 acre-feet, a minimal quantity of water, less than could be appropriated under the domestic well exception if the parcel were subdivided; thus, water is available for appropriation. The State

²State Engineer's Order No. 792, dated August 9, 1982, official records in the Office of the State Engineer.

³Transcript, public administrative hearing before the State Engineer, May 28, 1996.

⁴NRS 534.120.

⁵NRS 534.013; NRS 534.180; NAC 534.400.

Engineer further finds that the protestant did not provide any substantive evidence that a granting of a permit under Application 61194 would interfere with the quantity or quality of the protestant's existing water rights nor was any evidence presented that the granting of a permit under Application 61194 would threaten to prove detrimental to the public interest.

III.

The point of diversion under the application is more than one mile from the point of diversion under any of the protestant's water right permits. Using the standard Theis Non-Equilibrium equation to estimate the drawdown of the water level from the pumping of the proposed well at 2.11 gallons per minute for 24 hours per day, and using conservative values of storativity (0.001) and transmissivity (133 SFD), the State Engineer finds after pumping for a period of 10 years the drawdown of the groundwater level at a distance of 5,200 feet from the proposed point of diversion would be zero. The State Engineer further finds that the quantity of water applied for under Application 61194 is so minimal, and the distance great enough that the chances of interference with the protestant's water rights is nil.

IV.

The protestant introduced a memorandum to files regarding Protestant's Applications 52685, 52686 and 52687 for the purpose of alleging that the protestant is first in line for any additional waters available for appropriation in the groundwater basin.⁶ The State Engineer finds that the protestant is mistaken in its interpretation of that memorandum. The memorandum is referencing the applications then subject of review, i.e., Applications 52685, 52686 and 52687, and means that since 205 acre-feet could be granted at that time, the protestant was the first applicant in line for that water at that time.

The State Engineer further finds that once an application is granted and a permit is issued, the quantity of water allowed under

⁶Exhibit No. 10.

that permit is a final decision. An application is not left "open" so that if water ever becomes available in the future the State Engineer goes back to older applications already permitted, and if a person did not get all the water requested under the permit, the application is reopened and additional water granted. This interpretation would create chaos in the processing of applications and is not the way it is done. When the State Engineer endorses a permit, he limits, among other things, the diversion rate and annual volume. The permit represents permission to proceed to develop that amount of water and nothing more. In many cases the permittee cannot develop that amount of water and files proof of beneficial use⁷ on something less.⁸

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.⁹

II.

The State Engineer concludes that commercial use is a preferred use of water and has a high public benefit when considering the minimal amount of water being sought in Application 61194. The amount of water sought in Application 61194 (3.4 afa) can be met by pumping only 2.11 gallons per minute (gpm) on a continuous basis or 4.22 gpm on a halftime basis. The effects of pumping at this rate would have an insignificant effect on existing water rights or the overall hydrologic health of the groundwater basin.

⁷NRS 533.400.

⁸Additionally water can become available for future appropriation through cancellation of permits and forfeiture pursuant to NRS 534.090.

⁹NRS Chapters 533 and 534.

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:¹⁰

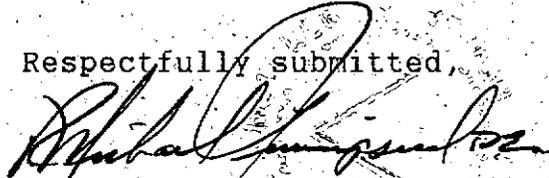
- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

NRS 534.120(2) provides that the State Engineer is authorized and directed to designate preferred uses of water within the respective areas so designated and from which the groundwater is being depleted, and in acting on applications to appropriate groundwater he may designate such preferred uses. The State Engineer concludes that the proposed use will not threaten to prove detrimental to the public interest.

RULING

The protest to Application 61194 is overruled and Application 61194 is hereby granted subject to existing rights and payment of the statutory fee.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P. E.
State Engineer

RMT/SJT/ab

Dated this 19th day of
August, 1996.

¹⁰NRS Chapter 533.370(3).