

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

IN THE MATTER OF APPLICATIONS 62068,)
62069 AND 62076 FILED TO CHANGE THE)
POINT OF DIVERSION, PLACE OF USE AND)
MANNER OF USE OF A PORTION OF THE)
UNDERGROUND WATERS PREVIOUSLY)
APPROPRIATED WITHIN THE FISH LAKE)
VALLEY GROUNDWATER BASIN (117),)
ESMERALDA COUNTY, NEVADA.)

INTERIM RULING

4545

GENERAL

I.

Application 62068 was filed on April 23, 1996, by William S. Wright, Jr. and Patricia M. Wright to change the point of diversion, place of use and manner of use of 0.119 cubic foot per second (cfs), not to exceed 7.5 acre-feet annually (afa), of the underground waters heretofore appropriated under Permit 49686. The proposed manner and place of use is for quasi-municipal and domestic purposes within portions of the N $\frac{1}{2}$ S $\frac{1}{2}$ of Section 29, T.1S., R.35E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 29.¹

II.

Application 62069 was filed on April 23, 1996, by William S. Wright, Jr. and Patricia M. Wright to change the point of diversion, place of use, and manner of use of 0.40 cfs, not to exceed 42.5 afa, of the underground water heretofore appropriated under Permit 49687. The proposed manner and place of use is for quasi-municipal and domestic purposes. The proposed place of use and the proposed point of diversion are identical to those described under Application 62068.²

III.

Application 62076 was filed on April 25, 1996, by William S. Wright, Jr. and Patricia M. Wright to change the point of

¹ File No. 62068, official records in the office of the State Engineer.

² File No. 62069, official records in the office of the State Engineer.

diversion, place of use and manner of use of 0.05 cfs, not to exceed 15.0 afa, of the underground water heretofore appropriated under Permit 49688. The proposed place of use and proposed point of diversion are identical to those described under Applications 62068 and 62069.³

IV.

Applications 62068, 62069 and 62076 were timely protested by Arlemont Ranch Company, D.J. and B.W. Peterson and B.A. Walker on the following grounds:¹⁻³

1. marginal base water rights;
2. technical errors in the supporting map;
3. the location of the proposed point of diversion may be in error;
4. insufficient water rights for development;
5. adverse effects on existing water rights and hydrology; and
6. detrimental to the public interest.

V.

On February 4, 1997, a public administrative hearing was held before representatives of the State Engineer in Carson City, Nevada to consider Applications 62068, 62069, and 62076.⁴

FINDINGS OF FACT

The protestants currently hold title to numerous decreed and permitted water rights which appropriate Chiatovich Creek water from points of diversions which are downstream from the proposed point of diversion described under the subject applications. A

³ File No. 62076, official records in the office of the State Engineer.

⁴ Exhibit No. 1, public administrative hearing before the State Engineer, February 4, 1997, (hereinafter "Exhibit No. 1").

compilation of these existing Chiatovich Creek water rights is as follows:⁵

<u>Permit Number</u>	<u>Diversion Rate/Duty</u>	<u>Use</u>	<u>Owner</u>
5249	1.2264 cfs/485.65 afa	Irrigation	Arlemont Ranch
9862	15 cfs/5223.134 afa	Irrigation	Arlemont Ranch
23192	25.8 cfs/5363.52 afa	Irrigation	Arlemont Ranch
10617	0.015 cfs/NA	Irrigation & Domestic	B. Ann Walker
<u>Decree Claim No.</u>			
01307	14.944 cfs/2523.72 afa	Irrigation	Arlemont Ranch
01308	3.831 cfs/459.72 afa	Irrigation	Arlemont Ranch

The State Engineer finds that there are significant appropriations of Chiatovich Creek water downstream from the proposed point of diversion, described under the subject applications.

II.

The protestants claim that the wells proposed under Applications 62068, 62069 and 62076 may actually pump water, the source of which is Chiatovich Creek. The applicants provided evidence that there exists an underground clay layer which prevents direct communication between Chiatovich Creek and the aquifer from which the proposed well would draw water.⁶ The well logs introduced into evidence for other wells in the immediate vicinity of the proposed point of diversion show no indication of a clay

⁵ Public records in the office of the State Engineer.

⁶ Transcript, pp. 60-61, public administrative hearing before the State Engineer, February 4, 1997, Exhibit No. 12, Tab 21.

layer.⁷ After reviewing other well logs in the general area and several miles from the proposed point of diversion which are on file in the State Engineer's office and consulting several technical reports on surface and underground hydrology of the Fish Lake Valley,^{8,9} the State Engineer finds that some of the evidence suggests there is an impermeable clay layer underlying portions of the Chiatovich Creek drainage and the area where the proposed wells are to be located. The State Engineer further finds that requiring a grout seal to a point below any clay layer that may exist near the creek and encountered in the drilling of the well will insure that the water will be pumped from the aquifer located below any clay layer and would be from a water source other than Chiatovich Creek.

III.

There are uncertainties regarding the extent and integrity of any underground soil barrier. While there is some evidence which indicates a clay layer may exist in portions of the Chiatovich Creek alluvial fan, there is no evidence or testimony on the record regarding the areal extent of any underground clay layer or the presence or absence of fissures, faults or other discontinuities in the clay layer that could allow Chiatovich Creek water to migrate downward into the aquifer in question. Additionally, there is no evidence whether the source of water in the aquifer in question is Chiatovich Creek or the natural underground recharge from the runoff from the adjacent mountains. Therefore, the State Engineer finds that additional information is necessary to insure that the water pumped from the proposed well is not Chiatovich Creek water.

⁷ Exhibit No. 12, Tab 20.

⁸ Official records in the office of the State Engineer, Well Log Index Book S-1.

⁹ Rush, F.E. and Katzer, T.L., WATER RESOURCES-RECONNAISSANCE SERIES, REPORT 58, WATER RESOURCES APPRAISAL OF FISH LAKE VALLEY, NEVADA AND CALIFORNIA, State of Nevada Department of Conservation and Natural Resources & United States Geological Survey, 1973.

The State Engineer finds that the following items must be completed in order to make a decision on Applications 62068, 62069 and 62076:

1. A pump test, supervised by a professional engineer experienced in groundwater hydrology and pump tests, must be performed at the site of the proposed well.
2. The pump test shall include measurements of the piezometric surface in any shallow aquifer above the clay layer and in the aquifer below any clay layer, as measured in a monitoring well located at an appropriate point between the test well and Chiatovich Creek.
3. A work plan must be submitted to the State Engineer prior to the start of any work. The plan shall contain a proposed schedule, locations of the test wells and monitoring wells, details of the pump test, i.e., estimated pumping rate, duration of test, monitoring well measurement schedule, etc.
4. After review of the engineer's work plan, the State Engineer shall issue an approval to drill the test well and the monitor well under Applications 62068, 62069 and 62076. The test well may be constructed in such a manner that it may be converted to production well at a later date.
5. A final report must be prepared by the professional engineer and submitted to the State Engineer which contains the results of the pump test. The State Engineer shall review the report and make a final decision as to whether to approve or deny the subject applications.
6. If the subject applications are denied, then the test well and the monitoring well for the denied applications must be plugged in accordance with the requirements of Nevada Administrative Code Chapter 534.

IV.

Applications 62068, 62069 and 62076 request a change in the manner of use, the place of use and the point of diversion of existing certificated water rights. It is the protestants contention that a portion of these certificated water rights were never placed into beneficial use. The State Engineer has established a formal procedure to assure that the information submitted to the State Engineer's office by the applicant to

support his claim of beneficial use is complete and accurate. In instances where a proof of beneficial use and a cultural map are submitted to support irrigation permits, personnel from the State Engineer's office conduct an informal on-site inspection to determine the location and magnitude of the cultivated acreage. The information gathered during the field investigation is then summarized in the form of a report which contains a recommendation by the investigating party to accept or reject the permittee's claim of beneficial use. The Nevada Division of Water Resources Report of Informal Field Investigation for Proof of Beneficial Use specific to Permits 49686, 49687 and 49688 states under Item II, "the entire acreage described in the proof has been irrigated. Water is beneficially used as indicated on proof." This report was signed by the investigating party on December 18, 1996, and made part of the respective permit files.¹⁰

The State Engineer finds that based on the opinion of the investigating party, the water appropriated under the base water right permits has been properly placed to beneficial use in the manner described under these permits. The State Engineer further finds that the certificates issued under these permits represents a true accounting of the location and extent of the beneficial use of the water.

V.

Each application to change an existing water right must be supported by a formal application map which must be submitted with the application or reference an existing map filed within the records of the State Engineer's office. The protestants claim that the application map submitted with the subject applications is defective in that it does not illustrate Chiatovich Creek as it relates to the location of the proposed point of diversion.¹¹ The

¹⁰ File No. 49686, official records in the office of the State Engineer.

¹¹ Exhibit Nos. 5, 6 and 7.

State Engineer requires that all active surface sources within one-quarter mile of any proposed point of diversion must be illustrated upon the application map and failure to comply with this requirement may result in the map being returned to the agent for correction.¹² Currently, the State Engineer's office provides a mechanism to modify non-fatal errors which are discovered during the initial review of the application maps. The State Engineer finds that the technical error contained within the subject applications supporting map can be corrected with relative ease and does not constitute a fatal error.

VI.

All of the subject applications request a change in existing underground water rights. The State Engineer finds that there is no new appropriation of water contemplated under the subject applications.

VII.

All of the subject applications seek a transfer of existing water rights to a new common point of diversion to support a 140 unit trailer park. It is the protestants' contention that this trailer park represents only a portion of the applicant's ultimate plans. The State Engineer finds that the applications before him must be considered only for the specific project contemplated by the applicant under these applications, and that any new appropriation for additional water must be considered on its own merits.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.¹³

¹² Guidelines for the Preparation of Water Rights Maps, official records in the office of the State Engineer.

¹³ NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:¹⁴

- A. the proposed use or change conflicts with existing rights, or
- B. the proposed use or change threatens to prove detrimental to the public interest.

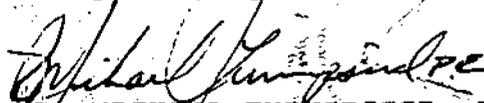
III.

There are uncertainties regarding the extent and integrity of any underground clay barrier separating the waters of Chiatovich Creek from the underground aquifer. Therefore, the final conclusion whether or not the proposed well under Applications 62068, 62069 and 62076 will interfere with the waters of Chiatovich Creek cannot be made until the results of the pump tests are available.

INTERIM RULING

The applicants are required to submit the results of pump tests as described within one year of the date of this Interim Ruling. A final ruling will be made after review of the pump test results.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 2nd day of
July, 1997.

¹⁴ NRS § 533.370.

