

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

IN THE MATTER OF APPLICATION 61427)
FILED TO APPROPRIATE THE PUBLIC)
WATERS FROM AN UNDERGROUND SOURCE)
WITHIN THE MUDDY RIVER SPRINGS)
GROUNDWATER BASIN (219), CLARK)
COUNTY, NEVADA.)

RULING

4565

GENERAL

I.

Application 61427 was filed on July 26, 1995, by S and R, Inc. to appropriate 200 gallons per hour, limited to 1,200 gallons per day, of water from the underground waters of the Muddy River Springs Groundwater Basin, Clark County, Nevada, for the commercial purpose of watering 1,000 pine trees within Lot 2 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T.14S., R.65E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 9.¹

II.

Application 61427 was timely protested by the United States Department of Interior, National Park Service, on the following grounds:

(a) the public interest would not be served if the water resources of the Lake Mead National Recreation Area are diminished or impaired as a result of this appropriation in combination with existing appropriations; (b) this application if approved, in combination with existing appropriations, will reduce the flow of the Muddy River, will impact springs within the Lake Mead National Recreation Area, and will impact the National Park Service's unquantified and unadjudicated alleged federal reserved water rights for the reserved lands within the Lake Mead National Recreation Area and such impacts would not be in the public interest; (c) Nevada State appropriative water rights issued for the Lake Mead National Recreation Area will be impaired by this appropriation in combination with other existing rights; and (d) the proposed appropriation will result in a decrease in the discharge to the Muddy River which is fully appropriated.¹

¹ File No. 61427, official records in the office of the State Engineer.

The National Park Service noted in its protest that it would not introduce facts or testimony which differ from that offered in a hearing on water right Applications 55450 and 58269, and would not make an appearance if a hearing was set for taking testimony and evidence with regard to this application.

III.

The State Engineer initially described and designated a portion of the Muddy River Springs Groundwater Basin on July 14, 1971, under the provisions of NRS § 534.030, as a basin in need of additional administration.² On April 24, 1990, the State Engineer extended the boundaries of the designated area and declared commercial use to be a preferred use in the Muddy Springs area.³

FINDINGS OF FACT

I.

S and R, Inc., the applicant under Application 61427, was not a party to the hearing held with regard to Applications 55450 and 58269. Therefore, S and R, Inc. had no opportunity to cross-examine as to any of the evidence the National Park Service put on with regard to those applications. The State Engineer finds that to accept the evidence and testimony of the National Park Service in the hearing on Applications 55450 and 58269 binding this applicant to that evidence without the opportunity for cross-examination would be highly irregular and unfair to the applicant in this case.

II.

The Nevada Legislature has determined it is within the discretion of the State Engineer whether or not to hold a hearing on a protested application.⁴ The State Engineer finds that a

² State Engineer's Order No. 392, dated July 14, 1971, official records in the office of the State Engineer.

³ State Engineer's Order No. 1023, dated April 24, 1990, official records in the office of the State Engineer.

⁴ NRS § 533.365(3).

hearing is not necessary with regard to Application 61427, particularly in light of the fact that the protestant has already indicated it would not attend any hearing if scheduled.

III.

Application 61427 is for a quantity of water not to exceed 1,200 gallons per day, which is less than the 1,800 gallons per day allowed under the domestic well exception. The point of diversion and place of use under the application are more than ten miles from the Lake Mead National Recreation Area. The nearest existing water right to the proposed point of diversion is located a distance of approximately 1,500 feet. The State Engineer finds that the quantity of water applied for under Application 61427 is so minimal, and the distance great enough that the chances of interference with the Muddy River Springs, the flow of the Muddy River, or Nevada State appropriative rights issued for the Lake Mead National Recreation Area would be nil.

IV.

Using the standard Theis Non-Equilibrium equation to estimate the drawdown of the water level from the pumping of the proposed well at 200 gallons per hour for six hours per day, and using conservative values of storativity and transmissivity, the State Engineer finds after pumping for a period of 10 years, the drawdown a distance of 400 feet from the proposed point of diversion would be zero.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.⁵

II.

The State Engineer concludes Application 61427 is for commercial purposes a preferred use of water.⁶

⁵ NRS Chapters 533 and 534.

⁶ NRS § 534.120.

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:¹

- 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.

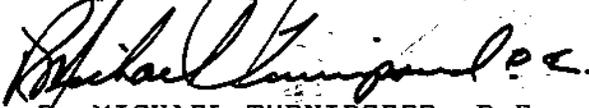
IV.

The State Engineer concludes there is no evidence that water is unavailable for appropriation at the proposed source, there will be no effect on existing rights from the granting of Application 61427, and there is no evidence the granting of Application 61427 would be detrimental to the public interest.

RULING

The protest to Application 61427 is overruled and Application 61427 is granted subject to existing rights and payment of the statutory fee.

Respectfully submitted,


E. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/ab

Dated this 17th day of
September, 1997.

¹ NRS § 533.370(3).