

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

IN THE MATTER OF APPLICATIONS 29782)
THROUGH 29785, INCLUSIVE, 29787, AND)
45612 FILED TO APPROPRIATE THE PUBLIC)
WATERS, AND APPLICATIONS 45613 THROUGH)
45622, INCLUSIVE, FILED TO CHANGE THE)
POINTS OF DIVERSION AND PLACES OF USE)
OF THE PUBLIC WATERS OF THE CARSON)
SINK WITHIN THE CARSON DESERT)
GROUNDWATER BASIN (101), CHURCHILL)
COUNTY, NEVADA.)

RULING

4635

GENERAL

I.

G. E. ap Roberts filed Applications 29782 through 29785, inclusive, and Application 29787 on November 19, 1975, each to appropriate 8.3 cubic feet per second (cfs) of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes within a variety of Sections as identified in Attachment A. Pavement Planing Company, Inc., filed Application 45612 on April 30, 1982, to appropriate 40.0 cfs of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes within the place of use as identified in Attachment A. Pavement Planing Company, Inc., also filed change Applications 45613 through 45622, inclusive, on April 30, 1982, to change the points of diversion and places of use of water heretofore requested for appropriation under Applications 29782 through 29785, inclusive, and 29787 from the Carson Sink for mining and milling purposes with the places of use identified in Attachment A.¹

Pavement Planing Company, Inc., is the current owner of record of Applications 29782 through 29785, inclusive, and 29787. Solar II, Inc., is the current owner of record of Applications 45612, 45614 and 45615, while Solar I, Inc., is the current owner of

¹ See Attachment A for summary of Applications 29782 through 29785, inclusive; 29787 and 45612 through 45622, inclusive; official records in the office of the State Engineer.

record of Applications 45613 and 45616 through 45622, inclusive, in the official records in the office of the State Engineer.¹

II.

Application 29782 through 29785, inclusive, and 29787 were timely protested by Nevada Department of Fish and Game on the following grounds:¹

The proposed diversion is one of eleven by the same applicant that will total between 27,500 and 66,600 acre feet per year from surface and shallow ground waters of Carson Sink. The water situation at the adjacent Stillwater Wildlife Management Area will undoubtedly be affected. The use of water applied for under Applications 13345 through 13351 will not be as productive and one of the most important waterfowl areas in Nevada will therefore be damaged.

Another sodium-producing company has approached the Department about a similar operation on lands controlled by this Department, the U.S. Fish and Wildlife Service and the Bureau of Land Management. This request has resulted in a requirement for a hydrologic study. The primary goal of the hydrologic study is to determine if adverse impacts will occur upon the Waters of Stillwater Management Area as a result of subsurface brine extraction.

If the hydrologic study mentioned above or a separate one conducted by a consultant for the applicant indicates no impact on the wildlife and recreation values, then this protest will be withdrawn provided adequate safeguards are assured for wildlife and its habitat. Because the methods of brine extraction and depths of aquifers are different, the first hydrologic study will probably not provide the needed information relative to this application.

No further action should be taken on the application until the study or studies have been completed and analyzed. WHEREFORE protestant prays that the application be Denied unless it is proven that protestant's impoundments will not be impaired and that all rights under Applications 13345 through 13351 will not be damaged.

FINDINGS OF FACT

I.

Applications 29782 through 29785, inclusive, 29787, 45612, and change Applications 45613 through 45622, inclusive, were filed as part of a proposed project to withdraw saline brine from subsurface areas of the Carson Sink. The saline brine was to be collected in wells and then evaporated in solar ponds to produce marketable sodium products.² By letter dated October 29, 1979, the applicant requested the State Engineer withhold action on the related applications while the applicant developed a monitoring system proposal acceptable to the applicant and protestant.³ The State Engineer finds that the applications were held in abeyance during a period of time while the applicants and the protestant attempted to negotiate a settlement for withdrawal of the protests. The State Engineer further finds the record devoid of any final resolution.

II.

By letter dated January 11, 1996, the State Engineer requested updated project information from the applicants. The letter assigned a 90 day time limit from January 11, 1996, to submit the information or the applications would be denied. The January 11, 1996, letter to Solar II, Inc., was returned by the United States Postal Service labeled "Wrong P.O. Box".³ By certified letters dated March 13 and 14, 1996, the State Engineer requested information, noting that the letter to Solar II, Inc., had been returned as undeliverable. The State Engineer finds that Pavement Planing Company, Inc., did not receive assignment of Applications 29782 through 29785, inclusive, and Application 29787 until May 26,

² Information from reference Report submitted June 24, 1981, File No. 29665, official records in the office of the State Engineer.

³ File No. 29665, official records in the office of the State Engineer.

1996, and that the address of Pavement Planing Company, Inc., is the same as that listed for Solar I, Inc., and Solar II, Inc. Properly endorsed receipts are on file for the March 13 and 14, 1996, letters.³ The State Engineer also sent certified notification to agents of record by letters dated May 17 and May 20, 1996. These two letters requested the information be submitted by June 30 and August 1, 1996, respectively. The State Engineer finds that the applicants and their agents were properly noticed of the request for additional information and that to date no information has been received.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

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

III.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.⁶

IV.

The applicants and their agents were properly notified of the requirement for additional information concerning these

⁴ NRS § Chapters 533 and 534.

⁵ NRS § 533.370(3).

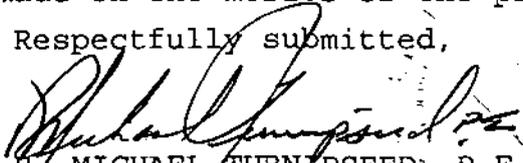
⁶ NRS § 533.375.

applications and have failed to submit the requested information to the State Engineer. The State Engineer concludes that without the information requested sufficient information is not available to properly guard the public interest.

RULING

Applications 29782 through 29785, inclusive, 29787, 45612 through 45622, inclusive, are hereby denied on the grounds that the applicants have not submitted the information requested by the State Engineer, and that without this information the approval of said applications would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,


R/ MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/DJL/cl

Dated this 9th day of
June, 1998.

ATTACHMENT A

Application 29782 was filed on November 19, 1975, by G. E. ap Roberts to appropriate 8.3 cubic feet per second (cfs) of the waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, T.23N., R.30E., M.D.B.&M. The proposed place of use is described as being all of Section 30, T.23N., R.29E.; Sections 10 through 15, inclusive, and 20 through 36, inclusive, T.23N., R.30E.; all of T.23N., R.31E.; Sections 31 through 36, T.23N., R.32E.; Sections covering E $\frac{1}{2}$ of T.22N., R.30E.; all of T.22N., R.31E.; and all of T.22N., R.32E., M.D.B.&M.⁷

Application 29783 was filed on November 19, 1975, by G. E. ap Roberts to appropriate 8.3 cfs of the waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14, T.23N., R.30E., M.D.B.&M. The proposed place of use is described as being the same as that listed under Application 29782.⁸

Application 29784 was filed on November 19, 1975, by G. E. ap Roberts to appropriate 8.3 cfs of the waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T.23N., R.31E., M.D.B.&M. The proposed place of use is described as being the same as that listed under Applications 29782 and 29783.⁹

Application 29785 was filed on November 19, 1975, by G. E. ap Roberts to appropriate 8.3 cfs of the waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, T.23N., R.31E., M.D.B.&M. The proposed place of use is described as being the same as that listed under Applications 29782, 29783 and 29784.¹⁰

⁷ File No. 29782, official records in the office of the State Engineer.

⁸ File No. 29783, official records in the office of the State Engineer.

⁹ File No. 29784, official records in the office of the State Engineer.

¹⁰ File No. 29785, official records in the office of the State Engineer.

Application 29787 was filed on November 19, 1975, by G. E. ap Roberts to appropriate 8.3 cfs of the waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T.22N., R.30E., M.D.B.&M. The proposed place of use is described as being the same as that listed under Applications 29782, 29783, 29784 and 29785.¹¹

Application 45612 was filed on April 30, 1982, by Pavement Planing Company, Inc., to appropriate 40.0 cfs of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T.23N., R.31E., M.D.B.&M. The proposed place of use is described as being all of T.23N., R.30E. and R.31E., M.D.B.&M.¹²

Application 45613 was filed on April 30, 1982, by Pavement Planing Company, Inc., to change the point of diversion and place of use of waters heretofore requested for appropriation under Application 29782 being 8.3 cfs of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T.23N., R.30E., M.D.B.&M. The proposed place of use is described as being the same as that listed under Application 45612.¹³

Application 45614 was filed on April 30, 1982, by Pavement Planing Company, Inc., to change the point of diversion and place of use of waters heretofore requested for appropriation under Application 29785 being 8.3 cfs of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T.23N., R.31E., M.D.B.&M. The proposed place of use is described as being the same as that listed under Applications 45612 and 45613.¹⁴

Application 45615 was filed on April 30, 1982, by Pavement Planing Company, Inc., to change the point of diversion and place

¹¹ File No. 29787, official records in the office of the State Engineer.

¹² File No. 45612, official records in the office of the State Engineer.

¹³ File No. 45613, official records in the office of the State Engineer.

¹⁴ File No. 45614, official records in the office of the State Engineer.

of use of waters heretofore requested for appropriation under Application 29784 being 8.3 cfs of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T.23N., R.31E., M.D.B.&M. The proposed place of use is described as being the same as that listed under Applications 45612, 45613 and 45614.¹⁵

Application 45616 was filed on April 30, 1982, by Pavement Planing Company, Inc., to change the point of diversion and place of use of waters heretofore requested for appropriation under Application 29787 being 8.3 cfs of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T.23N., R.30E., M.D.B.&M. The proposed place of use is described as being the same as that listed under Applications 45612, 45613, 45614 and 45615.¹⁶

Application 45617 was filed on April 30, 1982, by Pavement Planing Company, Inc., to change the point of diversion and place of use of a portion of waters heretofore requested for appropriation under Application 29783 being 1.38 cfs of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T.23N., R.30E., M.D.B.&M. The proposed place of use is the same as that listed under Applications 45612, 45613, 45614, 45615 and 45616.¹⁷

Application 45618 was filed on April 30, 1982, by Pavement Planing Company, Inc., to change the point of diversion and place of use of a portion of waters heretofore requested for appropriation under Application 29783 being 1.38 cfs of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T.23N., R.30E., M.D.B.&M. The proposed place

¹⁵ File No. 45615, official records in the office of the State Engineer.

¹⁶ File No. 45616, official records in the office of the State Engineer.

¹⁷ File No. 45617, official records in the office of the State Engineer.

of use is described as the same as that listed under Applications 45612, 45613, 45614, 45615, 45616 and 45617.¹⁸

Application 45619 was filed on April 30, 1982, by Pavement Planing Company, Inc., to change the point of diversion and place of use of a portion of waters heretofore requested for appropriation under Application 29783 being 1.38 cfs of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T.23N., R.30E., M.D.B.&M. The proposed place of use is described as being the same as that listed under Applications 45612, 45613, 45614, 45615, 45616, 45617 and 45618.¹⁹

Application 45620 was filed on April 30, 1982, by Pavement Planing Company, Inc., to change the point of diversion and place of use of a portion of waters heretofore requested for appropriation under Application 29783 being 1.38 cfs of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T.23N., R.30E., M.D.B.&M. The proposed place of use is described as being the same as that listed under Applications 45612, 45613, 45614, 45615, 45616, 45617, 45618 and 45619.²⁰

Application 45621 was filed on April 30, 1982, by Pavement Planing Company, Inc., to change the point of diversion and place of use of a portion of waters heretofore requested for appropriation under Application 29783 being 1.38 cfs of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, T.23N., R.30E., M.D.B.&M. The proposed place of use is described as being the same as that listed under Applications 45612, 45613, 45614, 45615, 45616, 45617, 45618, 45619 and 45620.²¹

Application 45622 was filed on April 30, 1982, by Pavement

¹⁸ File No. 45618, official records in the office of the State Engineer.

¹⁹ File No. 45619, official records in the office of the State Engineer.

²⁰ File No. 45620, official records in the office of the State Engineer.

²¹ File No. 45621, official records in the office of the State Engineer.

Planing Company, Inc., to change the point of diversion and place of use of a portion of waters heretofore requested for appropriation under Application 29783 being 1.38 cfs of the underground waters of the Carson Sink within the Carson Desert Groundwater Basin for mining and milling purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T.23N., R.30E., M.D.B.&M. The proposed place of use is described as being the same as that listed under Applications 45612, 45613, 45614, 45615, 45616, 45617, 45618, 45619, 45620 and 45621.²²

²² File No. 45622, official records in the office of the State Engineer.