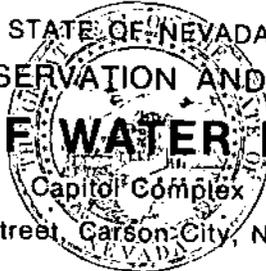


ROLAND D. WESTERGARD
Director

PETER G. MORROS
State Engineer

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES



201 S. Fall Street, Carson City, Nevada 89710

In reply refer to
No.

31189, 31202, 31421,
31997, 31998, 31999,
32000, 32001, 32673,
32674, 32675, 32676,
33692, 37124, 37125,
37126, 37127, 37251,
37550, 37589, 37590,
38836, 39835.

Address All Communications to
the State Engineer, Division
of Water Resources
Telephone (702) 885-4380

August 25, 1983

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31189 et al
August 25, 1983
Page Two

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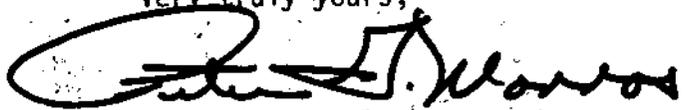
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Ladies and Gentlemen:

Enclosed is a copy of your application(s) with the endorsement of denial of the State Engineer as set forth.

Very truly yours,



Peter G. Morros
State Engineer

PGM/bc

cc: Richard W. Forman
Henry C. Conrad
Arnold C. Wood
Bureau of Land Management

ORIGINAL

STATE OF NEVADA

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

STATE ENGINEER

-oOo-

In the matter of:

Comment and Testimony on Designation
of Industrial Use in Steptoe Valley
Hydrographic Basin as a Preferred
Beneficial Use;

Applications to Appropriate 35538
through 35541;

Applications to Change Points of
Diversion 45836, 45838, 45840,
45841 and 45843;

Applications to Change Points of
Diversion 45834, 45835, 45837 and
45839;

Applications to Appropriate 35542
through 35549;

Applications to Change Points of
Diversion 45844 and 45855;

Applications to Appropriate in
Support of Carey Act and Desert Land
Entry Withdrawals 31189, 31202, 31203,
31353 through 31356, 31420 through
31422, 31778 through 31792, 31964,
31965, 31997 through 32003, 32102,
32103, 32313 through 32316, 32368
through 32370, 32391, 32673 through
32678, 33247, 33692, 36611, 36816,
37124 through 37127, 37219, 37220,
37251, 37550, 37589, 37590, 38836,
39835, 40155 and 40273.

REPORTER'S TRANSCRIPT OF DECISION
OF PETE MORROS, STATE ENGINEER

Wednesday, August 17, 1983

Ely, Nevada

CAPITOL REPORTERS

OFFICIAL AND GENERAL COURT REPORTERS

820 ALHAMBRA BLVD. SACRAMENTO, CALIFORNIA 95816

108 W. TELEGRAPH CARSON CITY, NEVADA 89701

(916) 446-2757

(702) 682-5322

1 ELY, NEVADA, WEDNESDAY, AUGUST 17, 1983

2 -oOo-

3 (The following is an excerpt
4 of the decision of State
5 Engineer Pete Morros
6 following the hearing:)

7 MR. PETER G. MORROS: **I am going to close this
8 hearing to the receipt of anymore evidence or testimony
9 and I am going to proceed to go ahead and rule on the
10 matters set for this hearing today.

11 I have made some notes and I am going to read
12 directly from my notes and make a verbal ruling in the
13 matter of the preferred use designation and the power plant
14 applications and I will request that the reporter prepare
15 a transcript of this ruling at the earliest possible
16 date and make it available to the State Engineer.

17 NRS 534.120, Subsection 2, provides that the
18 State Engineer may in the interest of public welfare
19 designate preferred uses of water within respective areas
20 so designated by order of the State Engineer, and in
21 acting on applications to appropriate groundwater he may
22 designate preferred uses in different categories with
23 respect to the areas involved. The State Engineer in
24 designating Steptoe Valley in 1979 under the provisions of
25 Chapter 534 of NRS had determined that the groundwater
26 resource in the Valley was in need of additional
administration. This administrative action was taken

1 primarily because of the concern regarding the concentration
2 of groundwater withdrawals within the Ely-McGill area and
3 not in anticipation of the power project, which I am well
4 aware is contrary to the belief of some people in interest.

5 Subsequent to the designation order an additional
6 preferred use order was entered on August 21st, 1980,
7 describing and setting forth an area within Steptoe Valley
8 encompassing the Ely Municipal Wellfield and surface
9 water discharge areas in the Ely and McGill areas. The
10 arid conditions that prevail in the state of Nevada dictate
11 that this vital resource be allocated to the most reasonable
12 and economic use and that the public interest and welfare
13 be an integral part of any determination in reaching these
14 decisions. That interest and welfare extends to the
15 protection of the existing rights which is mandated in the
16 statute as well as the wants and necessities of the state
17 and local areas. The State Engineer in many cases is
18 simply faced with weighing one public interest against
19 another in reaching a decision especially when competitive
20 beneficial uses are at issue.

21 Referring to the statute, 534.120, provides --
22 scratch that reference to 534.120.

23 There has been substantial testimony and
24 evidence provided at this hearing in support of the White
25 Pine power project by representatives of local government
26 and service organizations as well as other interest groups.

1 The main thrust of that testimony and evidence has been
2 directed towards the critical economic conditions that
3 face White Pine County at the present time and the
4 relationship of that economy to the power project. I think
5 the record clearly establishes that a vital public interest
6 is associated with White Pine County's application to
7 appropriate water in support of the power project.

8 It is therefore my ruling that industrial power
9 generation is declared a preferred use of the limited
10 groundwater resource within the Steptoe Valley Groundwater
11 Basin, excluding that area designated and described under
12 State Engineer's Order No. 754 dated August 21st, 1980.

13 A written order will be prepared and issued to that
14 effect.

15 In the matter of Applications 35538 through 35541,
16 and Applications 45836, 45838, 45841, 45843, 45834, 45835,
17 45837, 45839, which are under protest, those protests
18 pray that the approval of the applications be subject to
19 existing rights. The record I believe clearly indicates
20 that a substantial monitoring and companion study program
21 has been put into effect through a cooperative effort of
22 the U. S. Geological Survey, the Nevada Department of
23 Conservation and Natural Resources and the participants of
24 the White Pine power project. The primary objective of the
25 monitoring program is early detection of any adverse effects
26 of large groundwater withdrawals. I believe that this

1 effort provides the needed surveillance and watchdog effort
2 to satisfy the legitimate concerns of the protestants.
3 This is consistent with the doctrine of prior appropriation
4 and the statutory mandate of protection of existing
5 rights.

6 One other matter I think that the State Engineer
7 must consider in denial or approval of applications for
8 power generation are the provisions of NRS 533.372, Section
9 1, which states:

10 "Based upon the public interest and
11 the economic welfare of the State of
12 Nevada, the State Engineer may approve
13 or disapprove any application of
14 water to beneficial use or any
15 application which contemplates a
16 change in the place or beneficial
17 use water to a use involving the
18 industrial purpose of generating
19 energy to be exported out of the
20 state."

21 I don't feel there has been any evidence or
22 testimony presented at this hearing to support any
23 impairment of the public interest or economic welfare of
24 the State of Nevada.

25 It is therefore my ruling that the protests to
26 the granting of the referred to applications are herewith

1 upheld and permits will be granted under these applications
2 upon receipt of statutory permit fees subject to existing
3 rights. In addition, permits will be granted under
4 Applications 35542 through 35549, inclusive, with the same
5 condition, issuance is subject to existing rights.

6 In addition, the permits under Applications
7 35538 through 35549, inclusive, will be issued subject
8 to the following conditions:

9 Number one, the total combined duty under all
10 permits and/or applications to change that may be issued
11 shall not exceed 25,000 acre feet per year.

12 Number two, the permits under Applications 35538
13 through 35549 are issued with the express understanding
14 that the beneficial use authorized thereunder is a preferred
15 use within the Steptoe Valley Groundwater Basin, consistent
16 with the authority under NRS 534.120, Section 2, and any
17 application that you file to change the manner of use of the water
18 granted thereunder will be subject to additional
19 determination and evaluation consistent with the orderly
20 management of the resource and the public interest and
21 welfare.

22 Number three, the applicants will be responsible
23 and will continue to participate in an adequate monitoring
24 program as relates to the effects of the withdrawal of the
25 groundwater granted under these permits. This program will
26 be carried out in cooperation with the office of the State

1 Engineer and the limit and extent of the program will be
2 determined by the State Engineer.

3 Number four, the approval of Applications
4 35538 through 35549 is contingent on the siting of the
5 White Pine power project in the Steptoe Valley Groundwater
6 Basin. Should the final siting of the project be in an
7 area other than the Steptoe Groundwater Basin, the permits
8 granted hereunder may be subject to cancellation and the
9 waters will revert to the source.

10 Number five, totalizing meters will be installed
11 on all wells and any wells that may result due to the
12 approval of applications to change.. Accurate measurements
13 of all water placed to beneficial use will be kept and
14 submitted to the State Engineer on an annual basis.

15 Number six, the final determination as to the
16 limit and extent of the rights granted hereunder shall be
17 based on the actual amount of water placed to beneficial
18 use. Any use to water granted herein that is not placed
19 to beneficial use in the manner approved shall revert to
20 the source.

21 Now addressing the applications to change that
22 have been filed by White Pine County, 45834 through 45855,
23 these applications to change represent changes in the
24 points of diversion of the applications I have just
25 ruled on, which will be referred to as the base applications.
26 The applications to change propose to accomplish desired

1 dispersal of the wellfield under the base applications,
2 which in effect will result in dispersal of concentrated
3 pumpage and the associated effects. It is therefore my
4 ruling that Applications to Change 45834 through 45855
5 will be granted concurrently with the approval of the
6 base applications and subject to the same conditions as
7 imposed on the base applications.

8 And finally I draw your attention to the provisions
9 of NRS 533.395, Subsection 1, which states:

10 "If in the judgment of the State
11 Engineer, the holder of any permit
12 to appropriate the public water is
13 not proceeding in good faith and
14 with reasonable diligence to
15 perfect the appropriation, the State
16 Engineer may require at any time
17 the submission of such proof and
18 evidence as may be necessary to
19 show a compliance with the law.

20 If in his judgment the holder of a
21 permit is not proceeding in good
22 faith and with reasonable diligence
23 to perfect the appropriation, the
24 State Engineer shall cancel the
25 permit and advise the holder of
26 its cancellation," and I emphasize the word

1 "shall". I primarily cite the provisions of this statute
2 because of the size and scope of the White Pine power
3 project. The time limits that will be imposed for the
4 submitting of beneficial use under the approved applications
5 will be consistent with the scheduled completion of the
6 project as represented to the State Engineer. Any
7 consideration of applications for extension of time will
8 necessarily require a review of that good faith and due
9 diligence.

10 Any questions on that ruling?

11 (There was no response.)

12 MR. MORROS: I also want to draw attention to the
13 statute which I couldn't locate just a moment ago, and that
14 is NRS 534.110. This relates to the effects of these
15 withdrawals of water under this power project on existing
16 rights. There are some provisions in the statute that
17 expressly provide that as an express condition of each
18 appropriation of groundwater acquired under this chapter,
19 that the right of the appropriator shall relate to a
20 specific quantity of water and that such right must allow
21 for reasonable lowering of the static water level at the
22 appropriator's point of diversion. In determining such
23 reasonable lowering of the static water level in a
24 particular area, the State Engineer shall consider the
25 economics of pumping water for the general types of
26 crops growing and they also consider the effect of water use

1 on the economy of the area in general. The point I am
2 trying to make here is that should the withdrawal of these
3 large quantities of groundwater to support this project
4 result in some adverse effects on the groundwater levels
5 in the Steptoe Valley Groundwater Basin, then there will
6 have to be some determinations made as to what a reasonable
7 lowering of that groundwater level is, and associated with
8 that will be economic pumping lifts and the general
9 public interest and welfare. So the law requires that the
10 State Engineer protect those existing rights, but I don't
11 think the law goes to the extent of unreasonable protection.
12 In developing a resource there are going to be certain
13 effects that are going to occur, there is no way you can
14 get away from that. You punch one well down in a
15 groundwater basin you are going to have some minimal effect
16 on that groundwater resource.

17 In the matter of these DLE's and Carey Acts: the
18 primary purpose of this hearing was to provide a public
19 forum to receive additional information. NRS 533.375
20 specifically states that before either approving or
21 rejecting an application, the State Engineer may require
22 such additional information as will enable him to guard
23 the public interest properly, and in following through on
24 that statute, this hearing was set and it was set for the
25 purpose of allowing the applicants to appear before the
26 State Engineer to provide that additional information. I

1 can only conclude at this point that those applicants that
2 have chosen not to appear have no continuing interest. It
3 is therefore my ruling that Applications 31189, 31202,
4 31421, 31997, 31998, 31999, 32000, 32001, 32673, 32674,
5 32675, 32676, 33692, 37124, 37125, 37126, 37127, 37220 --
6 no, scratch 37220. 37251, 37550, 37589, 37590, 38836, 39835,
7 are herewith denied on the grounds that the applicants have
8 failed to provide the additional information requested and
9 have failed to show a continued interest in the applications
10 and the granting of the applications in the absence of
11 this continuing interest and request for additional
12 information would be detrimental to the public interest
13 and welfare.

14 The remaining applications we will consider on
15 the basis of the information that will be submitted to us.

16 I will declare this hearing closed.

17 (The hearing was thereupon
18 concluded and closed at
19 3:00 o'clock, p.m.)

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1 STATE OF NEVADA)
2 CARSON CITY) ss.
3)

4 I, HAROLD KRABBENHOFT, Certified Shorthand
5 Reporter Number 25, do hereby certify that I was present
6 on the 17th day of August, 1983, at the Bristlecone Pine
7 Convention Center, Ely, Nevada, and reported the proceedings
8 in the within-entitled cause in stenotype notes, which
9 were thereafter transcribed under my direction;

10 That the foregoing transcript, consisting of
11 pages 1 through 11, contains a full, true and complete
12 transcription of my said stenotype notes, and is a full,
13 true and correct record of an excerpt of said proceedings
14 had at said time and place.

15 DATED at Carson City, Nevada, this 17th day of
16 August, 1983.

17
18 
19 HAROLD KRABBENHOFT, CSR NO. 25
20
21
22
23
24
25
26