

IN THE OFFICE OF THE STATE ENGINEERS OFFICE  
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATIONS 45494)  
AND 46161 FILED TO APPROPRIATE THE )  
WATERS FROM AN UNDERGROUND SOURCE )  
IN FISH LAKE VALLEY, ESMERALDA )  
COUNTY, NEVADA. )

RULING

#3790

GENERAL

I.

Application 45494<sup>1</sup> was filed on April 2, 1982, by Luverne L. Anderson to appropriate 3.0 c.f.s. of water from an underground source for power purposes within the NW1/4 SW1/4 Section 28, N1/2 S1/2 Section 29, and the S1/2 N1/2, N1/2 SE1/4 Section 30, T.1S., R.35E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 16, T.1S., R.36E., M.D.B.&M.

II.

Application 46161<sup>2</sup> was filed on September 20, 1982, by Luverne L. Anderson to appropriate 3.0 c.f.s. of water from an underground source for irrigation purposes on 320 acres of land within portions of Sections 28, 29 and 30 T.1S., R.35E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 16, T.1S., R.36E., M.D.B.&M.

Application 45494<sup>3</sup> was timely protested by B.W. and D.J. Peterson on the following grounds:

- "1) Removing three second feet ground water will seriously affect the water level of my existing Domestic well in Sec 28 T1S R35E.
- 2) The site of the proposed diversion is near the primary water source serving Fishlake Valley, which has been

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1 Public record in the office of the State Engineer under 45494, 46161.

2 Public record in the office of the State Engineer under 45494, 46161.

3 Public record in the office of the State Engineer under 45494, 46161.

declared a Ground Water Basin by the State Engineer dated February 11, 1978.

3) The removal of water from an underground source so close to existing sources and so close to the primary water supply for the declared Ground Water Basin would jeopardize the prior appropriative right of the protestant.

4) See Denial of Application No. 33231 October 5, 1978 for the same area."

Application 45494<sup>4</sup> was timely protested by Magma Power Co. on the following grounds:

"The proposed well on this application owned by Magma Power Co. Magma Power Co. has Federal Geothermal Lease on all land in Section 16, T.1S., R.36E., M.D.B.&M. and intends to use the fluids from the well and the underground resources for geothermal electric generation purposes. Reference is made to a telegram dated December 1, 1982 from Richard Foss, Vice President of Magma Power Co. to Peter G. Morros, State Engineer."

Application 46161<sup>5</sup> was timely protested by Sente Associates Four on the following grounds:

- "1. There is no unappropriated water at the proposed source of supply.
2. The proposed use will conflict with existing underground rights of protestant.
3. The proposed use will be detrimental to the public interest.

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<sup>4</sup> Public record in the office of the State Engineer under 45494, 46161.

<sup>5</sup> Public record in the office of the State Engineer under 45494, 46161.

4. The proposed diversion will produce highly saline waters. The runoff of said waters from the proposed place of use into Chiatovich Creek will be detrimental to the quality of said creek waters and will be detrimental to protestant's surface water rights."

Application 46161<sup>6</sup> was timely protested by Harold R. Eade and Barbara A. Eade on the following grounds:

- "1. There is no unappropriated water at the proposed source of supply.
2. The proposed use will conflict with exiting underground rights of protestant.
3. The proposed use will be detrimental to the public interest."

The above protestants request the respective applications be denied.

#### FINDINGS OF FACT

##### I.

A hearing<sup>7</sup> in the matter of protested Application 45494 and 46161 was held in Carson City on May 28, 1985. Representatives for the applicant and all protestants were in attendance.

##### II.

The proposed point of diversion<sup>8</sup> for the subject applications including a well and casing is owned by Magma Power which has a Federal Geothermal Lease on all land in Section 16, T.1S., R.36E., M.D.B.&M. Magma Power intends to use the fluids

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<sup>6</sup> Public record in the office of the State Engineer under 45494, 46161.

<sup>7</sup> Transcript of Administrative Hearing May 28, 1985 under Luverne Anderson is public record in the office of the State Engineer.

<sup>8</sup> Protestant Exhibit #2 Administrative Hearing May 28, 1985.

from the well and underground sources for geothermal electric generation purposes. Magma Power will not voluntarily consent to the applicants entry upon the land.

III.

At the hearing<sup>9</sup> in the matter of protested Application 46161, it was represented that the subject application would be amended changing the place of use to a Desert Land Entry in the south half of Section 16, T.1S., R.36E., M.D.B.&M. With the approval of the agent, the hearing on protested Application 46161 was then cancelled.

IV.

A review of the record under Application 46161 reveals the applicant did not follow through with an application to change the place of use as promised at the hearing.

V.

The applicant under Application 46161<sup>10</sup> has not filed with Bureau of Land Management for Desert Land Entry for the south half of Section 16, T.1S., R.36E., M.D.B.&M. as was represented to occur at the hearing.

VI.

The State Engineer finds that it is not in the public interest to approve Application 46161 after a public hearing on the protests was cancelled upon the stipulation that the application would not be pursued as filed.

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<sup>9</sup> Transcript of Administrative Hearing May 28, 1985 pg's. 10, 11 testimony by Richard Whitney. Public record in the office of the State Engineer.

<sup>10</sup> Letter dated March 11, 1991, filed under 46161 in the office of the State Engineer.

VII.

The State Engineer finds that the source of water for Application 45494<sup>11</sup> was originally an oil exploration well drilled to a depth of 9,000 feet. It was later outfitted with a cement plug 150 feet thick set at a depth of 800 feet. It has an artesian flow of approximately 35 gallons per minute from water pressure above the plug. The temperature is approximately 40 degrees centigrade (108° Fahrenheit).

VIII.

Testimony of the agent<sup>12</sup> for Application 45494 revealed that a non thermal power generator was to be installed at the source. There was no evidence offered that the applicant has contacted the owner of the well or Bureau of Land Management to arrange for access or permission to build a power plant. There was no evidence presented to indicate the available flow was sufficient for a non thermal power generator.

IX.

The geothermal lease N-8429 issued to Magma Power Co. which includes Section 16, T.1S., R.36E., M.D.B.&M. expires in December 31, 1991.

Bureau of Land Management has issued a Recreational and Public purpose (R & PP) lease N-50991 to Esmeralda County for the subject well site in Section 16. This lease will allow the county to develop the drill site and pools for public use.<sup>13</sup>

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11 Transcript of Administrative Hearing May 28, 1985 pg's. 17, 18 testimony by Dean Pilkington. Public record in the office of the State Engineer.

12 Transcript of Administrative Hearing May 28, 1985 pg's. 33-36 testimony by Richard Whitney. Public record in the office of the State Engineer.

13 Letter dated March 4, 1991 from USDA-BLM filed under Application 45494. Public record in the office of the State Engineer.

X.

The State Engineer finds that it is not in the public interest to approve Application 45494 for power generation on lands the applicant does not own or control and can not demonstrate the ability to place the water to beneficial use.

CONCLUSIONS

I.

The State Engineer has jurisdiction<sup>14</sup> over the matter of this action.

II.

The State Engineer is prohibited<sup>15</sup> by law from granting a permit under an application to appropriate the public water where:

- 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.

III.

The State Engineer finds that it is not in the public interest to approve Application 46161 after a public hearing on the protests was cancelled upon the stipulation that the application would not be pursued as filed.

IV.

The State Engineer finds it is not in the public interest to approve Application 45494 for power generation on lands the applicant does not own or control and can not demonstrate the ability to place the water to beneficial use.

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14 NRS Chapter 533.

15 NRS Chapter 533.370 subsection 3.

RULING

The protests to the granting of Application 45494 are hereby upheld and Application 45494 is herewith denied on the grounds that the applicant does not own or control the land described under the point of diversion and can not demonstrate the ability to place the water to beneficial use.

The protests to the granting of Application 46161 are hereby upheld and Application 46161 is herewith denied on the grounds that the applicant stipulated that the application would not be pursued as filed, and further, the applicant has failed to demonstrate a continuing interest in the application.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/GC/pm

Dated this 21st day of  
March, 1991.