

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES
BEFORE R. MICHAEL TURNIPSEED, STATE ENGINEER

In the Matter of Applications
54121 and 54122.

TRANSCRIPT OF PROCEEDINGS

RULING

July 7, 1994

Sparks, Nevada

APPEARANCES:

For the State: Jonathan C. Palm, Ph.D., P.E.
Mark Buetner, P. E.
123 Nye Lane
Carson City, NV 89710

For the Applicant: LeRoy Arrascada, Ltd
145 Ryland Street
Reno, Nevada 89501

George Benesch, Esq.
Benesch & Fermoile
427 Ridge Street
Reno, NV 89505

For the Protestants: Pro Per

Reported by: KATHRYN TERHUNE, CCR, RPR
Nevada CCR #209

ORIGINAL

1 JULY 7, 1994, P.M., SPARKS, NEVADA.

2 -o0o-

3
4
5 THE STATE ENGINEER: We'll be back on the record
6 for the purposes of ruling. Although one might construe some
7 negligence on the part of the Division of Water Resources by
8 the fact we failed to act on application 48901 and 480902 for
9 a period between 1969 and 1985, the State Engineer's records
10 indicate that this was clearly at a time when we were
11 overwhelmed by the number of applications on file in our
12 office. And in fact, we still have as of this date something
13 in the neighborhood of 4100 applications that are ready for
14 action.

15 You have to take a look at the entire appropriation
16 process as delineated in statute NRS 533.324 through 533.410
17 to find that the legislature not only anticipated but
18 mandates steady progression between appropriation and putting
19 the water to beneficial use.

20 Due to the fact that this applicant purchased these
21 water rights in 1969 and did not make an attempt to notify
22 the division or make them aware of the purchase until 1985,
23 that he certainly had no plan on putting the water to
24 beneficial use during that time period.

25 Secondly, then in 1985 the applicant seeks to

1 engage in a water bottling business, item number 15 on the
2 application, states that water under this application will be
3 commingled with water under other water rights to serve
4 bottled water and other related water services. Now, there
5 is no indication as to what other water related services were
6 anticipated, except that in the heading above, there are
7 instructions to fill in this blank for uses other than
8 irrigation and stock watering, state the number and type of
9 units to be served for annual or annual consumptive use.
10 Those items are required in part under NRS Chapter 533.335,
11 in particular NRS 533.340 sub 3.

12 So it is my opinion that at least when the
13 applications 48901 and 48902 were filed, there was no
14 anticipation of any quasi municipal use other than for the
15 water bottling business.

16 Also in 1985 he filed the deeds to transfer the
17 title and filed change applications on the original 17395 and
18 17426 to change the manner of use from irrigation to this
19 proposed water bottling processing plant.

20 In that applications 48901 and 48902 he stated in
21 the application that it would take five years to put the
22 water to beneficial use. Four years out of those five years
23 passed with the drilling of two wells, but no water was put
24 to beneficial use.

25 So in 1989 he filed applications 54121 and 54122.

1 to change the place of use to the service area of Silver Lake
2 Water Company and a proposed gravel plant four miles to the
3 west.

4 Two months ago or three, whatever the date was, he
5 removed the gravel plant from the place of use, and then
6 there was some testimony about 200 acres that were adjacent
7 to Silver Lake between Silver Lake and Highway 395. I don't
8 recall anything in the record that that was intended to be
9 included within the service area of the beneficial use of
10 this water, but at any rate I can see no other reason why
11 that was put into the record other than to demonstrate that
12 perhaps applicant was planning on some kind of municipal use
13 or quasi municipal use on that 200 acres.

14 And then today we find that, at least there was no
15 testimony offered today that that was included in the place
16 of use but it was the intention all along was to commingle
17 this water included in the two permits, 54121 and 54122, into
18 the service area of Silver Lake Water Company and then later
19 petition the Public Service Commission to expand the service
20 area to include property in the original place of use under
21 48901 and 48902.

22 I find that the application 25 years later, rather
23 the applicant 25 years after he acquired the application
24 still has no real definite plan on how he's going to put this
25 water to beneficial use.

1 The Lemmon Valley groundwater basin's one of the
2 most critical in the State of Nevada in terms of being over
3 appropriated. The State Engineer has not approved any new
4 large appropriations for over 30 years with the exception of
5 this one, which was filed early in time.

6 The State Engineer, my predecessor, called for the
7 filings of beneficial use on all water put to beneficial use
8 as of the time beginning in about 1976. Roland Westergard,
9 in a ruling on eight applications filed by Valley Water
10 Company, approved eight change applications to commingle all
11 the water, and consolidated the place of use, but stated in
12 the ruling that no further extensions of time were granted
13 and he called for beneficial use. That was January 13th,
14 1975.

15 Then on June 30th, 1976, in regards to application
16 26672, Peter G. Morros, my predecessor, in a letter to
17 Charles Murphy states that a general procedure has been
18 established to deny applications for extensions of time under
19 appropriations in the Lemmon Valley area. This resulted in
20 the cutting off of appropriators in various partial stages of
21 development.

22 I find that it would not be in the public interest
23 to perpetuate this shell game of changes in use in an attempt
24 to gain additional time to either sell the water right or sit
25 on them until the value increases.

1 I further find that the applicant has not attempted
2 to change the manner of use from water bottling plant to
3 houses, rather assuming from the applications that there was
4 no manner of use change would mean a water bottling plant at
5 the existing place of use, plus houses in the Silver Lake
6 Water Company which is an expansion of the intended uses
7 which is not allowed under Nevada law.

8 Therefore, that Applications 54121 and 54122 are
9 hereby denied on the grounds that it is not in the public
10 interest to allow, number one, the water right to be
11 expanded; number two, to perpetuate the shell game of changes
12 with no plans to put the water to beneficial use; and number
13 three, to perpetuate an appropriation where no water has been
14 placed to beneficial use, when other developments were
15 curtailed by calling for the filing of the beneficial use 14
16 years ago.

17 The applicant has filed an extension of time,
18 Application 48901 and 48902 in 1990. The record reflects
19 that he requested until one year after the change
20 applications were permitted in order to file the beneficial
21 use.

22 Not only do I think that that would be an
23 impossibility to go to beneficial use within one year even if
24 the water rights were granted, the letter sent to
25 Mr. Echeverria on July 26th, 1993, indicates that those

1 extensions were only granted until October 23rd, 1991.

2 Therefore, I believe that Mr. Echeverria thought by
3 the fact that he had a pending change application, that these
4 applications were held in good standing, and in fact they
5 have been not permanently cancelled because of change
6 applications pending. But, I look at the applications to
7 change 54121 and 54122 only as asking permission to change
8 the manner of use, excuse me, change of the place of use of
9 applications. If those applications are denied, then we have
10 to deal with the status of the base rights on which those
11 changes were filed.

12 The record reflects no applications for extensions
13 of time have been filed since the 1990 request. NRS 533.410
14 mandates that I cancel the permits if the permit holder fails
15 to keep the permit in good standing by filing applications
16 and being granted extensions of time. Therefore, I find that
17 permit 48901 and 48902 are permanently cancelled.

18 Any questions on the ruling?

19 MR. BENESCH: Are you going to have a formal ruling
20 or is this going to be it?

21 THE STATE ENGINEER: That will be it.

22 MR. BENESCH: All right.

23 MR. ARRASCADA: We're going to order a copy of that
24 ruling, please, as soon as you can get it to us.

25 THE STATE ENGINEER: I should have mentioned if I

1 didn't at the beginning of the hearing, that the State
2 Engineer will require the original and one copy. I believe
3 that's also stated in the hearing notice, and the costs of
4 those will be borne pro rata among the applicant and
5 protestants and then any other copies of the transcript
6 should be made by arranging with the court reporter for those
7 copies.

8 If there are no further questions?

9 MR. BENESCH: One further question. The date of
10 cancellation 48901 and 02 is today's date?

11 THE STATE ENGINEER: That's correct. Those of
12 course are subject to 533, whatever that section is, George.

13 MR. BENESCH: 395.

14 THE STATE ENGINEER: 395. You petition for
15 reinstatement.

16 If there are no other questions, this hearing's
17 closed.

18 (The proceedings concluded.)
19
20
21
22
23
24
25

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

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, KATHRYN TERHUNE, Official Court Reporter for the State of Nevada, Department of Conservation and Natural Resources, Division of Water Resources, do hereby certify:

That on Thursday, the 7th day of July, 1994, I was present at Sparks City Council Chambers for the purpose of reporting in stenotype notes the within-entitled public hearing;

That the foregoing transcript, consisting of pages 1 through 8, inclusive, includes a full, true and correct transcription of my stenotype notes of said public hearing.

Dated at Carson City, Nevada, this 13th day of July, 1994.


KATHRYN TERHUNE, CCR, RPR
Nevada CCR #209