

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

IN THE MATTER OF THE REMAND OF DENIED)  
APPLICATIONS 58357 AND 58358, FILED )  
TO APPROPRIATE THE WATERS OF AN )  
UNDERGROUND SOURCE WITHIN THE PAHRUMP )  
GROUND WATER BASIN (162), CLARK )  
COUNTY, NEVADA AND INYO COUNTY, )  
CALIFORNIA. )

SUPPLEMENTAL  
RULING ON REMAND

# 4210

GENERAL

I.

Application 58357 was filed on November 30, 1992 by Roland H. Wiley, to appropriate 5.0 cubic feet per second (cfs) of water from an underground source for recreational purposes within portions of Sections 23, 24, 25, 26 and 27, and Tracts 39, 40 and 41, all in T.22S., R.54E., M.D.B.&M. This place of use is located entirely in Nevada. The point of diversion is described as being within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 16, T.22N., R.10E., (S.B.B.&M.) located within the State of California. Item 15 of the application states: "Water will be used to irrigate a 18 hole championship golf course that will cover an area of approximately 640 acres."<sup>1</sup>

II.

Application 58358 was filed on November 30, 1992 by Roland H. Wiley, to appropriate 2.0 cfs of water from an underground source for quasi-municipal purposes within portions of Sections 23, 24, 25, 26 and 27, and Tracts 39, 40 and 41, all in T.22S., R.54E., M.D.B.&M. This place of use is located entirely in Nevada. The point of diversion is described as being within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 16, T.22N., R.10E., (S.B.B.&M.) located within the State of California. Item 15 of the application states: "Water will be used for a hotel and casino, with a bridal(sic) path and assorted recreational facilities, RV park and a mobile home park for employees of the hotel and casino."<sup>2</sup>

---

<sup>1</sup> File No. 58357, public record in the Office of the State Engineer.

<sup>2</sup> File No. 58358, public record in the Office of the State Engineer.

III.

The State Engineer denied Applications 58357 and 58358 by Ruling No. 3935 dated February 8, 1993, on the grounds that, "the granting thereof would conflict with existing rights and be detrimental to the public interest."<sup>3</sup>

IV.

A petition for Judicial Review of Administrative Agency Decision was filed by Roland H. Wiley concerning Ruling No. 3935, with the District Court of the State of Nevada in and for the County of Clark. A Stipulation and Order of Remand signed by the Honorable Judge Gerard Bongiovanni, District Court, Clark County, Nevada was issued on April 15, 1993. Said Order remanded Case No. A317045, Dept. IV, Docket No. "C", pertaining to the subject denied applications, to the State Engineer for administrative hearing to supplement the record.<sup>4</sup>

V.

A public administrative hearing in the matter of the denied applications was held before the State Engineer on July 27, 1994, in Las Vegas, Nevada, pursuant to the remand order.<sup>5</sup>

VI.

The State Engineer designated the Pahrump Valley Groundwater Basin as an area in need of additional administration to protect the groundwater resource.<sup>6</sup> In order to further regulate groundwater pumping the State Engineer ordered that applications to

---

<sup>3</sup> State Engineer's Ruling No. 3935, public record in the Office of the State Engineer.

<sup>4</sup> Exhibit No. 6, Public Administrative Hearing before the State Engineer, July 27, 1994.

<sup>5</sup> Exhibit No. 1, Public Administrative Hearing before the State Engineer, July 27, 1994.

<sup>6</sup> State Engineer's Order No's. 176, 193 and 205, dated March 11, 1941, January 15, 1948 and January 23, 1953, respectively, official records in the Office of the State Engineer.

appropriate water for irrigation purposes would be denied.<sup>7</sup> Finally, the State Engineer ordered that applications to appropriate water for all uses, except small commercial uses on the valley floor, would be denied.<sup>8</sup> The State Engineer found that due to the withdrawals of groundwater from this basin, the groundwater levels are declining.<sup>8</sup>

#### FINDINGS OF FACT

##### I.

The proposed point of diversion under Applications 58357 and 58358 is located within the southwest portion of the Pahrump Valley Groundwater Basin, that is within the State of California. The proposed place of use of Applications 58357 and 58358 lie entirely within the State of Nevada. Applications 58357 and 58358 may not be denied solely because the point of diversion is outside the State of Nevada.<sup>9</sup> Instead, the State Engineer finds that Applications 58357 and 58358 are being considered on their merits and against established criteria for approval or denial.<sup>10</sup> The State Engineer further finds that the Applicant is required to obtain permits from the Nevada State Engineer, for the uses and under the conditions described in Applications 58357 and 58358.<sup>9</sup>

##### II.

In complying with the above referenced orders, the State Engineer has denied previous applications to appropriate groundwater in the Pahrump Valley Groundwater Basin for irrigation, quasi-municipal, and commercial uses.<sup>11</sup> These applications were

---

<sup>7</sup> State Engineer's Order No. 381, dated June 1, 1970, official records in the Office of the State Engineer.

<sup>8</sup> State Engineer's Order No. 955, dated October 26, 1987, official records in the Office of the State Engineer.

<sup>9</sup> NRS 533.515.

<sup>10</sup> NRS 533.370.

<sup>11</sup> State Engineer's Ruling No. 3486, dated January 11, 1988, official records in the Office of the State Engineer.

denied on the grounds that their approval would conflict with existing rights and be detrimental to the public interest. Under Application 58357, the Applicant proposes to irrigate a new golf course.<sup>1</sup> Under Application 58358, the Applicant proposes to use the water for a hotel and casino, recreational facilities, and a mobile home park.<sup>2</sup> The State Engineer finds that the proposed uses under Application 58357 and 53858 are similar to those of applications that were previously denied. The State Engineer further finds that Applications 58357 and 53858 must be denied, in accordance with the State Engineer's Order No. 955.<sup>8</sup>

### III.

It is estimated that 192,000 acre feet of groundwater in storage underlie the Applicant's property in California.<sup>12</sup> The applicant feels that the approval of Applications 58357 and 58358 would have and infinitesimal effect on the groundwater resource and on existing rights in the Pahrump Valley Groundwater Basin.<sup>13</sup> However, this 192,000 acre feet of groundwater beneath his California land is a portion of the basin wide valley fill reservoir.<sup>14</sup> The State Engineer finds that because the ground water does not respect political boundaries, removing water from the groundwater beneath the Applicant's California property has the same effect as removing groundwater from the Nevada portion of the basin.

### IV.

The State Engineer's management of the withdrawal of water from a groundwater basin is based on limiting the quantity of water removed to the average quantity of water replenished each year

---

<sup>12</sup> Exhibit No. 13, Public Administrative Hearing before the State Engineer, July 27, 1994.

<sup>13</sup> Transcript p. 27, Public Administrative Hearing before the State Engineer, July 27, 1994. The applicant may be confusing the storage of groundwater and the perennial yield of the basin.

<sup>14</sup> Harrill, James R., "Groundwater Storage Depletion in Pahrump Valley, Nevada-California, 1962-1975," USGS Water Supply Paper 2279, 1986.

(perennial yield). The applicant missed this concept or may have confused perennial yield with storage. When groundwater withdrawals exceed the recharge, then groundwater levels decline, causing water quality degradation, storage depletion, diminishing yield of wells, uneconomic pumping lifts, and land subsidence.<sup>14</sup> The perennial yield of the Pahrump Valley Groundwater Basin is estimated to be 19,000 acre feet annually.<sup>14</sup> Withdrawals of groundwater in 1992 totaled 23,289, for all uses.<sup>15</sup> The total quantity of groundwater committed by permits and certificates is about 65,000 acre feet annually.<sup>16</sup>

The Applicant's consultant recognized that pumping water from beneath the applicant's California property would further deplete the groundwater in storage.<sup>12</sup> He warned that a groundwater mining type of operation would occur if water is pumped from wells located on the California property to meet the demands of a proposed development.<sup>12</sup>

The State Engineer finds that the approval of Applications 58357 and 58358 would further contribute to the decline in groundwater levels in the Pahrump Valley Groundwater Basin and increase the potential for water quality degradation, diminishing yield of existing water right holders' wells, uneconomic pumping lifts, and land subsidence. The State Engineer finds that the approval of Applications 58357 and 58358 would conflict with existing rights and prove detrimental to the public interest.

V.

The applicant, Mr. Wiley, testified that the approval of Applications 58357 and 58358 would not conflict with existing rights in Pahrump Valley.<sup>17</sup> He felt that the low permeability of the soil would prevent any affect to existing wells. However, Mr.

---

<sup>15</sup> Exhibit No. 9, Public Administrative Hearing before the State Engineer, July 27, 1994.

<sup>16</sup> Exhibit No. 8, Public Administrative Hearing before the State Engineer, July 27, 1994.

<sup>17</sup> Transcript p. 29, Public Administrative Hearing before the State Engineer, July 27, 1994.

Wiley is not recognized as an expert in hydrogeology and later testified that he is only "somewhat" familiar with the geology of his property.<sup>18</sup> The State Engineer finds that the opinions expressed by Mr. Wiley are not those of an expert and will be given very little weight in deciding this matter.

VI.

The Applicant's Attorney stated that Applications 58357 and 58358 seek to change the place of use of water already appropriated in California to a proposed place of use in Nevada.<sup>19</sup> When an application to change the place of use is approved, the use on the former place of use is retired in favor of use on the new place of use. In this case, the Nevada State Engineer has no jurisdiction over the existing place of use in California. If Applications 58357 and 58358 were approved, the Applicant or someone else could resume the use of groundwater on the California property and the Nevada State Engineer would have no authority to order it stopped. The State Engineer finds that Applications 58357 and 58358 are applications to appropriate groundwater from the Pahrump Valley Groundwater Basin and there is no evidence to indicate that any existing California use would be diminished.

VIII.

The Attorney for the applicant stated that the State Engineer's denial of the applicant's "right to import water from his lands in California to his property in the state of Nevada is clearly a violation of Act I Sec. 8 Clause 3 of the U.S. Constitution, the Commerce Clause."<sup>20</sup> The U.S. Supreme Court treated this issue in the Sporhase case<sup>21</sup> and found that groundwater is, in fact, an article of interstate commerce.

---

<sup>18</sup> Transcript p. 37, Public Administrative Hearing before the State Engineer, July 27, 1994.

<sup>19</sup> Transcript pp. 11-12, Public Administrative Hearing before the State Engineer, July 27, 1994.

<sup>20</sup> Transcript pp. 14, 46, Public Administrative Hearing before the State Engineer, July 27, 1994.

<sup>21</sup> Sporhase v. Nebraska, 458 U.S. 941, 102 S.Ct. 3456, 736 L.Ed.2d 1254 (1982).

However, the State Engineer makes the following distinction between the Sporhase case and the case at hand. First, Nebraska was attempting to prohibit the export of groundwater onto adjacent land in Colorado based on its legal ownership. In the case at hand the applicant is attempting to import groundwater from California to Nevada, which on its face would appear to enhance the economy and tax base of Nevada. Secondly, the Nevada statutes<sup>22</sup> do not prohibit the export or import of water.

The Nevada statute on importation of water provides in part "...the permit must be issued as in other cases pursuant to the provisions of NRS 533.324 to 533.450 inclusive, and NRS Chapter 534.<sup>20</sup> In the instant case the applications would have been denied even if the point of diversions were in Nevada for use in Nevada.<sup>23</sup> Therefore, the State Engineer finds that there is no constitutional question regarding these applications and that he does have authority to rule on this matter.

#### CONCLUSIONS

##### I.

The State Engineer has jurisdiction of the subject matter of this action.<sup>24</sup>

##### II.

The State Engineer is prohibited by law from approving an application to appropriate the public waters 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.<sup>25</sup>

---

<sup>22</sup> NRS 533.515 and 533.520.

<sup>23</sup> Citing the Supreme Court language "Obviously, a State that imposes severe withdrawal and use restrictions on its own citizens is not discriminating against interstate commerce when it seeks to prevent the uncontrolled transfer of water out of the State." Sporhase v. Nebraska, 458 U.S. at 955-956.

<sup>24</sup> NRS 533.515 and NRS Chapter 534.

<sup>25</sup> NRS 533.370.

III.

No application for the appropriation of water may be denied because of the fact that the point of diversion is situated in any other state. In all such cases where the place of intended use is situated within this state, a permit must be issued pursuant to the provisions of NRS 533.324 to 533.450 and Chapter 534 of the NRS.<sup>24</sup>

IV.

The pumping of groundwater within the Pahrump Valley Groundwater Basin exceeds the perennial yield. The approval of Applications 58357 and 58358, which seek to pump additional groundwater from this basin, would increase this imbalance and increase the decline in the groundwater. The State Engineer concludes that the approval of Applications 58357 and 58358 would be detrimental to the public interest and would conflict with existing rights.

V.

The State Engineer concludes that Applications 58357 and 58358 are applications to appropriate and cannot be considered applications to change existing water rights appurtenant to the Applicant's California property.

VI.

By State Engineer's Ruling No. 3935, dated February 8, 1993, the State Engineer denied Applications 58357 and 58358 without publication, because applications to appropriate groundwater, within Pahrump Valley, for similar uses, were previously denied. Considering the evidence and testimony on the record on remand, the State Engineer concludes that the denial of Applications 58357 and 58358 should be affirmed.

VII.

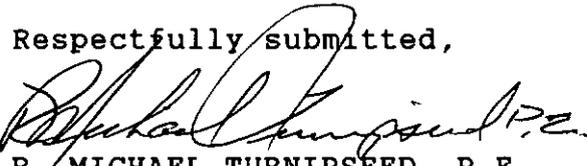
On remand, Applications 58357 and 58358 were considered on their merits. These applications were denied by State Engineer's Ruling No. 3935 and that denial is being affirmed in this Ruling on Remand because their approval would conflict with existing rights and would prove detrimental to the public interest. The State Engineer concludes that Applications 58357 and 58358 are not being

denied because the point of diversion under said applications is located in another state.

RULING

The denial of Applications 58357 and 58358 under State Engineer's Ruling No. 3935 is hereby affirmed, because the granting thereof would conflict with existing rights and prove detrimental to the public interest.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/GWQ/pm

Dated this 11th day of  
August, 1995.