

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

IN THE MATTER OF APPLICATIONS)
58890, 58891 AND 58892 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
VARIOUS UNNAMED SPRINGS WITHIN THE)
CARSON VALLEY HYDROGRAPHIC BASIN)
(105) DOUGLAS COUNTY, NEVADA.)

RULING

#5189

GENERAL

I.

Application 58890 was filed on June 4, 1993, by Las Vegas Paving Corporation to appropriate 0.20 cubic feet per second (cfs) of water from an unnamed spring. The proposed manner and place of use is for golf course irrigation of not more than 250 acres of land located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7; the SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 8; the NW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17; the NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18; all within T.14N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, T.14N., R.20E., M.D.B.&M.¹

II.

Application 58891 was filed on June 4, 1993, by Las Vegas Paving Corporation to appropriate 0.20 cfs of water from an unnamed spring. The proposed manner and place of use is for golf course irrigation of not more than 250 acres of land located within the same place of use described under Application 58890. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, T.14N., R.20E., M.D.B.&M.²

¹ File Number 58890, Official records in the Office of the State Engineer.

² File Number 58891, Official records in the Office of the State Engineer.

III.

Application 58892 was filed on June 4, 1993, by Las Vegas Paving Corporation to appropriate 0.20 cfs of water from an unnamed spring. The proposed manner and place of use is for golf course irrigation of not more than 250 acres of land located within the same place of use described under Application 58890. The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 8, T.14N., R.20E., M.D.B.&M.³

IV.

All of the subject applications were timely protested by Kathleen R. Weaver on the following grounds:^{1,2,3}

1. The spring in question under Application 58890, [58891, 58892] along with others in the area, is, upon information and belief, the source of the water supply for a natural wetlands area upon which native flora and fauna are dependent. Inasmuch as Nevada is the driest state in the Union (based on least annual precipitation), diversion of this spring from such a natural wetlands habitat to golf course irrigation should not be approved.

2. Upon information and belief that the existing natural wetlands area is, according to Las Vegas Paving Corporation's representative, going to be mitigated by replacement of this existing wetlands with an area whose source of water is secondarily treated effluent, said mitigation will not reproduce a habitat conducive to the propagation of all the native flora and fauna species found in the existing wetlands area, and therefore this application should not be approved.

3. Upon information and belief that the United States Army Corps of Engineers and the National Fish and Wildlife Service each have jurisdiction over wetlands areas, the request for this application, along with any protests filed thereto, should be reviewed by those agencies if this application is not denied at the outset. And further, upon information and belief that the Nevada Division of Health and the Nevada Division of Environmental Protection each at least have an interest in the application of the secondarily treated effluent that would allegedly replace this spring as a water source for a wetlands mitigation area, the

³ File Number 58892, Official records in the Office of the State Engineer.

request for this application, along with any protests filed thereto, should also be reviewed by those agencies if this application is not denied at the outset.

4. Upon information and belief that the waters of the Carson Valley may currently be over appropriated, this application should not be approved.

5. The undersigned additionally incorporates by reference as though fully set forth herein and adopts as her own, each and every other protest to the subject application filed pursuant to NRS 533.365.

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.365 provides that the State Engineer shall consider a protest timely filed, but that it is within his discretion whether or not to hold an administrative hearing as to any particular water right application. The State Engineer finds that he has sufficient information available to review the applications and a hearing in this instance is not necessary.

II.

The State Engineer finds that the applications request diversions of water from surface water sources.

III.

One of the key protest issues made by the protestant is based upon the issue of the wetlands. The State Engineer finds that the determination and delineation of wetlands is not under the duties, responsibilities or jurisdiction of the State Engineer.⁴

IV.

Every water right permit now issued by the State Engineer incorporates the following term:

"The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies."

⁴ NRS § 532.110.

v.

The State Engineer finds that the granting of these permits would not prevent wildlife from access to the waters of the spring nor will the State Engineer waive the provisions of NRS § 533.367, which provides protection for wildlife, which customarily use the water.

VI.

The State Engineer finds after a review of the records of his office that no additional water right applications, permits or claims of vested right are filed upon the subject points of diversion and that the water sources in question are not tributary to any decreed stream systems.

VII.

All of the subject applications request appropriations of water from surface sources for the irrigation of a substantial parcel of land. Before any consideration can be given regarding the approval or denial of these applications, it must be determined that sufficient flow can be derived from these sources to adequately irrigate the proposed place of use. This information is often obtained from field measurements taken at suitable measuring points. Accordingly, on September 9, 2002, and October 22, 2002, informal field investigations in the matter of Applications 58890, 58891 and 58892 were held at the proposed points of diversion. Field observations made during the course of the investigation are summarized as follows:

September 9, 2002

<u>Spring Source</u>	<u>Flow rate in gallons per minute(gpm)</u>
Spring (Application 58891)	
Spring (Application 58892)	Combined flow approx. 120gpm
Spring (Application 58890)	Undetermined, currently undeveloped spring, and wetlands area

October 22, 2002

<u>Spring Source</u>	<u>Flow rate in gallons per minute(gpm)</u>
Spring (Application 58891)	
Spring (Application 58892)	Combined flow approx. 100gpm
Spring (Application 58890)	Undetermined, currently undeveloped spring, and wetlands area

The State Engineer finds that based upon the above field data from the proposed points of diversion, a minimum of 100 gallons per minute of water is present at the source.

VIII.

The State Engineer finds that at this minimum average flow the total expected amount of water that may be diverted from these sources is approximately 160 acre-feet annually. In reviewing this data, the State Engineer recognizes that it was acquired during the "low flow" period of the water season.

IX.

Applications 58890, 58891 and 58892 request an appropriation of water for irrigation purposes within a common place of use. One hundred forty acres within this common place of use is currently being irrigated by secondary effluent provided by the Indian Hills General Improvement District Wastewater Treatment Plant. The value of these applications as a source of irrigation water is essential to the adequate and complete irrigation of this common place of use, which is not to exceed 250 acres.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

⁵ NRS chapter 533.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the approval of surface water applications from sources which are neither tributary to any other water claimed by any other water users nor claimed by any other water users would not conflict with existing rights.

IV.

Applications 58890, 58891 and 58892 were protested, in part, on the grounds that their approval would adversely affect adjacent wetlands. The State Engineer is not responsible for the maintenance and preservation of any wetlands that may exist within the State of Nevada. When applied for, the State Engineer is empowered to issue water right permits in support of wetlands. The actual preservation and maintenance of these areas falls within the jurisdiction of the appropriate State and Federal agencies, and not the Office of the State Engineer. The State Engineer concludes that the issue of the natural wetlands habitat contained within the protest can be dismissed from consideration.

V.

Another issue made by the protestant is that the waters of the Carson Valley Hydrographic Basin may be over appropriated. Apparently, the protestant is addressing the protest issue to

⁶ NRS § 533.370(3).

groundwater appropriations. These applications request an appropriation from various springs, which are by definition surface water sources. Therefore, the State Engineer concludes that the over appropriation issue contained within the protest can be dismissed from consideration.

VI.

One of the protest issues made by the protestant is based on the issue that other Federal and State agencies review the request for these applications, if they are not denied at the outset. The requirements that the permit holder obtain other permits from State, Federal and local agencies are not waived by the issuance of these permits. Therefore, the State Engineer concludes that the other agencies review these applications as contained within the protest can be dismissed from consideration.

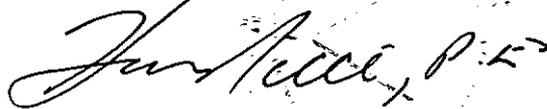
VII.

Any permit issued to appropriate water from the subject springs would be issued under the provision of NRS § 533.367 which requires that sufficient water must remain at the source to fulfill any customary use by wildlife. The State Engineer concludes that sufficient safeguards exist under the NRS to ensure that the approval of the subject applications will not adversely affect wildlife.

RULING

The protests to Applications 58890, 58891 and 58892 are hereby overruled and said applications are hereby approved subject to the payment of the statutory permit fees.

Respectfully Submitted,



HUGH RICCI, P.E.
State Engineer

HR/SNC/jm

Dated this 10th day of
December 2002.