

IN THE MATTER OF APPLICATIONS 34818,)
34819, 36199, 36683, 36828, 36834,)
38850, 38851, 41397 AND 41398 TO)
APPROPRIATE WATER FROM AN UNDERGROUND)
SOURCE IN THE LAS VEGAS ARTESIAN)
BASIN, CLARK COUNTY, NEVADA)

R U L I N G

2656

INTRODUCTION

I

Applications 34818, 34819, 36199, 36683, 36828, 36834, 38850, 38851, 41397 and 41398 were filed to appropriate water from an underground source in the Las Vegas Artesian Basin, Clark County, Nevada.

II

In 1976, Water Resources Bulletin No. 44, "Pumping and Ground Water Storage Depletion in Las Vegas Valley, Nevada, 1955-1974", by James R. Harrill. This report prepared cooperatively by the Nevada Department of Conservation and Natural Resources - Division of Water Resources and the U. S. Geological Survey. This report is available in the office of the State Engineer.

III

In 1979, Water Resources - Information Series, Report 29, "Water-Level Changes Associated with Ground Water Development in Las Vegas Valley, Nevada, March 1977 to March 1978", by David B. Wood. This report prepared cooperatively by the Department of Conservation and Natural Resources - Division of Water Resources and the U. S. Geological Survey. This report is available in the office of the State Engineer.

IV

In 1979, "Revised Clark County 208 Water Quality Management Plan", dated December 18, 1979, prepared by the Clark County Department of Comprehensive Planning. This report is available in the office of the Clark County Department of Comprehensive Planning.

FINDINGS OF FACT

I

Application 34818 was filed on January 3, 1978 by Jonathan Morgan to appropriate 0.10 c.f.s. of water from an underground source for domestic; domestic garden purposes. The point of diversion and place of use is described as within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, T.19S., R.60E., M.D.M. The applicant states "that this application is filed as a portion of an application of entry made under the terms of the Carey Land Acts and is to provide for a self-sufficient homesite under domestic use."

II

Application 34819 was filed on January 3, 1978 by John A. Taylor to appropriate 0.10 c.f.s. of water from an underground source for domestic; domestic garden purposes. The point of diversion and place of use is described as within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T.20S., R.60E., M.D.M. The applicant states that "this application filed as a portion of an application of entry under the terms of the Carey Land Acts and is to provide for a self-sufficient homesite under domestic use."

III

Application 36199 was filed on November 27, 1978 by the Tule Springs Land Company to appropriate 1.0 c.f.s. of water from an underground source for quasi-municipal and domestic purposes. The point of diversion is described as within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T.19S., R.60E., M.D.M. The place of use is within the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 8, T.19S., R.60E., M.D.M. Under remarks, the applicant states: "88 mobile home estate lots." By deed filed on November 13, 1979, Frank J. Burke is the owner of record of Application 36199.

IV

Application 36683 was filed on February 8, 1979 by Gary J. Davis to appropriate 2.4 c.f.s. of water from an underground source for quasi-municipal purposes. The point of diversion and place of use is described as within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T.19S., R.60E., M.D.M. The applicant states that "this application is filed as a portion of an application of entry under the terms of the Carey Land Acts, and is to provide for a self-sufficient homesite under domestic use."

V

Application 36828 was filed on February 20, 1979 by Frank Hine to appropriate 1.0 c.f.s. of water from an underground source for quasi-municipal; domestic purposes. The point of diversion and place of use is described as within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T.19S., R.60E., M.D.M. The applicant states that "this application is filed as a portion of an application of entry under the terms of the Carey Land Acts and is to provide for a self-sufficient homesite under domestic use."

VI

Application 36834 was filed on February 20, 1979 by Frank Butta to appropriate 1.0 c.f.s. of water from an underground source for quasi-municipal; domestic purposes. The point of diversion and place of use is described as within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.19S., R.60E., M.D.M. The applicant states that "this application is filed as a portion of an application of an entry onto lands under the terms and conditions of the Carey Land Act; and is to provide for self-sufficient homesite under domestic use."

VII

Applications 38850 and 38851 were filed on August 22, 1979 by Amici Developers to appropriate 0.106 c.f.s. of water under each application from an underground source for quasi-municipal purposes. The points of diversion and place of use is described as within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.19S., R.60E., M.D.M. Under remarks the applicant states on each application: "the water will be used to provide domestic water service to 76, 1/2-acre lots and to supply water for fire protection. Estimated use is 1800 gallons per day per lot or 0.212 second feet. This well will be used to provide 1/2 the required amount or 0.106 second feet."

VIII

Applications 41397 and 41398 were filed on May 19, 1980 by James R. Aldrich to appropriate 0.069 c.f.s. of water under each application from an underground source for commercial purposes. The points of diversion and place of use is described as within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T.19S., R.60E., M.D.M. Under remarks the applicant states on each application: "Tree Nursery Farm, to be served by two wells supplying 31 g.p.m. each 8 hours per day. Each well to supply 3 acre-feet over 5 acres per year."

IX

No protests were timely filed to Applications 34818, 34819, 36199, 36683, 36828, 36834, 38850, 38851, 41397 and 41398. One protest was received after the time for filing protests in behalf of the Tule Springs - Gilcrease Ranch residences to the granting of Applications 38850 and 38851.

X

A hearing was held before the State Engineer, after proper notice, on September 24, 1980 in Las Vegas, Nevada in the matter of Applications 34818, 34819, 36683, 36828 and 36834. 1/

XI

A hearing was held before the State Engineer, after proper notice, on October 22, 1980 in Las Vegas in the matter of Applications 34818, 34819, 36199, 36683, 36828, 36834, 38850, 38851, 41397 and 41398. Applicants under Applications 34818, 34819, 36683, 36828 and 36834 were noticed of this hearing to allow any further testimony they desired to be entered in the record. 2/

XII

Testimony in behalf of the applicants to Applications 34818, 34819, 36683, 36828 and 36834 at the September 24, 1980 hearing proposes to use the water in the following manner:

1. In support of a Carey Act land application to the State of Nevada for segregation of certain vacant public land.

2. Water appropriated under the subject applications to be used to supply a 35 unit housing development under each application, to house the employees and their families for the farming development.
3. The housing development will be a detached 40-acre parcel from the farm development.
4. The farm development will not use water from the Las Vegas Artesian Basin, but will purchase water from the City of North Las Vegas from the Colorado River through the Southern Nevada Water Supply Project. 3/

Requests were made at the September 24, 1980 hearing to make minor changes to all of the subject applications including reducing the amount of appropriation to 0.055 c.f.s. In addition, requests were made to change the manner of use under both Applications 34818 and 34819 from domestic to quasi-municipal. 4/

XIII

Testimony in behalf of the applicants to Applications 34818, 34819, 36199, 36683, 36828, 36834, 38850, 38851, 41397 and 41398 at the October 22, 1980 hearing follows:

No new testimony was presented in support of Applications 34818, 34819, 36683, 36828 and 36834 at the October 22, 1980 hearing. 5/

Testimony presented in behalf of the applicant to Application 36199 - Tule Springs Land Company, indicated that one well is proposed to serve the 88 mobile home estate lots. Also, that the property is presently zoned for one-half acre lots for residential estates but not trailer estates. 6/

Testimony in behalf of the applicants to Applications 38850 and 38851 - Amici Developers, presented a plan for 76 dwelling units on 40 acres of land. The proposed water supply system consists of two wells drilled to depths of 1,000 feet into deep aquifers and the water distribution system constructed to Las Vegas Valley Water District standards. The witness stated the land is properly zoned for the proposed development and that the tentative map has been approved by both the Planning Commission and the County Commission and the final map has been approved by the Planning Commission. And, further, that the final map is waiting approval by the County Commission pending posting of the improvement bond and the approval of Applications 38850 and 38851. 7/

The applicant presented testimony in his own behalf in support of Applications 41397 and 41398 - James R. Aldrich. The witness reviewed the requirement of approximately 31 gallons per minute to grow containerized nursery plants on 3 acres of land to produce 20,000 to 25,000 plants per year. 8/

Testimony presented in behalf of those opposed to the granting of Applications 38850 and 38851 expressed a concern for increasing declines in the water table in the area of the Gilcrease Ranch by further demands from the ground water reservoir and for reports of increasing concentrations of nitrates encountered in ground water at depths extending to 140 feet below land surface and the possibility of future contamination of lower aquifer zones. Studies were quoted recommending that wells drilled in this area be sealed to a depth of 200 feet to prevent leakage to the lower production zones. Also studies recommended old existing wells be cemented shut to prevent migration of contaminants from the upper levels to the lower aquifers. In addition, the witness testified that the static water level of the artesian aquifer has been lowering at a constant rate of five feet per year to reverse the leakage from upward to downward with a resulting lowering of the water table from the shallow domestic wells and a downward percolation of surface or near surface contaminants. 9/

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties and the subject matter of this action. 10/

II

The State Engineer is prohibited by statute from granting a permit where:

1. There is no unappropriated water at the proposed source, or
2. The proposed use or change conflicts with existing rights, or
3. The proposed use or change threatens to prove detrimental to the public interest. 11/

III

The proposal outlined in the September 24, 1980 hearing in the matter of Applications 34818, 34819, 36683, 36828 and 36834 is innovative to acquire public land under the Carey Act by the purchase of surface water from the Colorado River for the irrigation of an orchard and establishing a subdivision to house the employees and their families. The use of ground water for irrigation from the Las Vegas Artesian Basin has been curtailed since 1955. The only demand for ground water is to supply water to a subdivision of 35 single family dwellings under each application.

IV

Minor changes to Applications 34818, 34819, 36683, 36828 and 36834 requested in the September 24, 1980 hearing to reduce the amount of appropriation is within the authority of the State Engineer. 12/ The request to change the manner of use under Applications 34818 and 34819 from domestic to quasi-municipal must be in compliance with statute. 13/

V

One well proposed under Application 36199 is not a reliable source of water supply to 88 mobile home estate lots. The land is not zoned for the purpose for which the water to be appropriated is to be beneficially used. Application 36199 is located in a concentrated area of domestic wells on one-acre plus parcels and existing water rights to support a public park and in an area of continuous significant declining water levels and threatened contamination of the ground water resources.

VI

Applications 38850 and 38851 are located in an area of domestic well concentration and existing water rights to support a farming operation and in an area of significant declines in the water levels and increasing contamination of the ground water resources. The increased demand from the ground water reservoir by Applications 38850 and 38851 threatens to contaminate the deeper aquifers by further lowering the water table in this area of concentration of septic tank leachant and farm fertilizer.

VII

Applications 41397 and 41398 are not near the Tule Springs - Gilcrease Ranch area of concentration and the use is minimal for a small scale nursery. A large portion of the water applied to the nursery plants by drip system will return to the ground water.

VIII

A total of 304 new housing units are proposed by Applications 34818, 36199, 36683, 36828, 36834, 38850 and 38851. Each housing unit will require potable water and each will contribute leachant from a septic tank to a declining ground water reservoir.

IX

Application 34819 for 35 single family dwellings is far removed from the Tule Springs - Gilcrease Ranch area of concentration and will be considered on its own merits.

X

Additional development in the Tule Springs - Gilcrease Ranch area without an imported water supply is of extreme concern to the State Engineer and this concern is shared by the residents of the area and County and State agencies.

XI

The subject applications are located within an area where there are records of declining water tables. The average decline between 1958 and 1973 was approximately 2 feet per year and for the period 1973 through 1979, approximately 5 feet per year for an total average decline of 63 feet over a 21 year period. 14/

XII

It is the intention of the Nevada Legislature to prevent the waste of underground waters and the pollution and contamination thereof. 15/

RULING

Applications 34818, 36199, 36683, 36828, 36834, 38850 and 38851 are herewith denied on the grounds that the granting would accelerate the declining water table and the nitrate intrusion in an already critical area and that the granting would prove to be detrimental to the public interest.

Application 34819 will be held in abeyance with no further action, pending approval of entry to the public land.

Applications 41397 and 41398 will be granted on the grounds that no existing rights are adversely affected and the granting will not be detrimental to the public interest.

Respectfully submitted,



William J. Newman
State Engineer

WJN/bc

Dated this 26th day of

MAY, 1981.

FOOTNOTES

1. Transcript of the September 24, 1980 hearing is a public record available for examination in the office of the State Engineer.
2. Transcript of the October 22, 1980 hearing is a public record available for examination in the office of the State Engineer.
3. Transcript of the September 24, 1980 hearing, pages 21-44, is a public record available for examination in the office of the State Engineer.
4. Transcript of the September 24, 1980 hearing, pages 44-60, is a public record available for examination in the office of the State Engineer.
5. Transcript of the October 22, 1980 hearing, pages 9-11 and pages 59-60, is a public record available for examination in the office of the State Engineer.
6. Transcript of the October 22, 1980 hearing, pages 12-15, is a public record available for examination in the office of the State Engineer.
7. Transcript of October 22, 1980 hearing pages 15-24, is a public record available for examination in the office of the State Engineer.
8. Transcript of October 22, 1980 hearing, pages 24-29, is a public record available for examination in the office of the State Engineer.
9. Transcript of October 22, 1980 hearing, pages 30-48, is a public record in the office of the State Engineer.
10. NRS 533.030, subsection 1.
11. NRS 533.370, subsection 4.
12. NRS 533.380, subsection 2.
13. NRS 533.345.
14. Transcript of October 22, 1980 hearing, pages 31, 32 and 40; 1976 Information Series - Report 22, page 6 and 1979 Information Series - Report 29, page 4; public records available in the offices of the State Engineer and the U. S. Geological Survey, Carson City, Nevada.
15. NRS 534.020, subsection 2.