

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

IN THE MATTER OF APPLICATIONS 37260,)
37306, 37307, 37308, 37309, 37312,)
37387, 37392, 37393, 37394, 37396,)
37559, 37575, 37634, 37650, 37764,)
37765, 37767, 37771, 37772, 37779,)
37780, 37781, 38336, 38466, 38467,)
AND 39309 FILED TO APPROPRIATE THE)
WATERS OF AN UNDERGROUND SOURCE)
WITH THE AMARGOSA GROUND WATER)
BASIN, IN NYE COUNTY, NEVADA.)

RULING ON REMAND

GENERAL

I.

Application 37260 was filed by Louise K. Devereaux on March 28, 1979, to appropriate 5.0 c.f.s. of underground water for irrigation and domestic purposes on 320 acres within the W1/2 NW1/4, W1/2 NE1/4, W1/2 SE1/4, W1/2 SW1/4 of Section 5, T.17S., R.49E., M.D.B.&M.¹ The point of diversion is within the NE1/4 NW1/4 of Section 5, T.17S., R.49E., M.D.B.&M.

Application 37306 was filed by Douglas Ueckert on March 29, 1979, appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the W1/2 of Section 5, T.17S., R.49E., M.D.B.&M.¹ The point of diversion is within the SE1/4 NW1/4 of Section 5, T.17S., R.49E., M.D.B.&M.

Application 37307 was filed by Jean M. Records on March 29, 1979, appropriate 5.0 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the W1/2 NW1/4, W1/2 NE1/4, W1/2 SW1/4, W1/2 SE1/4 of Section 6, T.17S., R.49E., M.D.B.&M.¹ The point of diversion is within the NE1/4 NW1/4 of Section 6, T.17S., R.49E., M.D.B.&M.

Application 37308 was filed by Cheryl L. Records on March 29, 1979, to appropriate 5.0 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the W1/2 NE1/4, W1/2 SW1/4, W1/2 SE1/4 of Section 6, T.17S., R.49E., M.D.B.&M.¹ The point of diversion is within the NE1/4 NE1/4 of Section 6, T.17S., R.49E., M.D.B.&M.

¹ State's Exhibit No. 7.

Application 37309 was filed by Lon H. Records on March 29, 1979, to appropriate 5.0 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the W1/2 NW1/4, W1/2 NE1/4, W1/2 SW1/4, W1/2 SE1/4 of Section 4, T.17S., R.49E., M.D.B.&M.¹ The point of diversion is within the NW1/4 NW1/4 of Section 4, T.17S., R.49E., M.D.B.&M.

Application 37312 was filed by Richard C. Records on March 29, 1979, to appropriate 5.0 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the W1/2 NW1/4, W1/2 NE1/4, W1/2 SW1/4, W1/2 SE1/4 of Section 8, T.17S., R.49E., M.D.B.&M.¹ The point of diversion is within the NE1/4 NW1/4 of Section 8, T.17S., R.49E., M.D.B.&M.

Application 37387 was filed by Michael L. Berk on March 30, 1979, appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the E1/2 of Section 22, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the NE1/4 NE1/4 of Section 22, T.16S., R.49E., M.D.B.&M.

Application 37392 was filed by Verdes H. Ueckert on March 30, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the W1/2 of Section 4, T.17S., R.49E., M.D.B.&M.¹ The point of diversion is within the SW1/4 NW1/4 of Section R, T.17S., R.49E., M.D.B.&M.

Application 37393 was filed by Delbert Berk on March 30, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the W1/2 of Section 22, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the NW1/4 SW1/4 of Section 22, T.16S., R.49E., M.D.B.&M.

Application 37394 was filed by Rich W. Berk on March 30, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the S1/2 of Section 29, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the SE1/4 SW1/4 of Section 29, T.16S., R.49E., M.D.B.&M.

Application 37396 was filed by Rosanna S. Ueckert on March 30, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the E1/2 of Section 5, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the SW1/4 NE1/4 of Section 5, T.17S., R.49E., M.D.B.&M.

Application 37559 was filed by Jean E. Berk on April 2, 1979, appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the W1/2 of Section 7, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the NE1/4 SW1/4 of Section 7, T.16S., R.49E., M.D.B.&M.

Application 37575 was filed by Kathleen Ann Berk on April 2, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the W1/2 of Section 7, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the NE1/4 SW1/4 of Section 7, T.16S., R.49E., M.D.B.&M.

Application 37634 was filed by Dianna Lynn Berk on April 3, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the W1/2 of Section 8, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the NE1/4 SW1/4 of Section 8, T.16S., R.49E., M.D.B.&M.

Application 37650 was filed by Christine Rose Harris on April 3, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the E1/2 of Section 2, T.17S., R.48E., M.D.B.&M.¹ The point of diversion is within the SE1/4 NE1/4 of Section 2, T.17S., R.48E., M.D.B.&M.

Application 37764 was filed by Richard D. Colquitt on April 9, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the W1/2 of Section 16, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the SW1/4 NW1/4 of Section 16, T.16S., R.49E., M.D.B.&M.

Application 37765 was filed by Helen V. Colquitt on April 9, 1979, to appropriate 6.4 c.f.s. of underground water for

irrigation and domestic purposes 320 acres within the E1/2 of Section 17, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the SW1/4 NE1/4 of Section 17, T.16S., R.49E., M.D.B.&M.

Application 37767 was filed by Sherry A. Colquitt on April 9, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the E1/2 of Section 17, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the SW1/4 NE1/4 of Section 17, T.16S., R.49E., M.D.B.&M.

Application 37771 was filed by Otto Ravenholt on April 9, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the S1/2 of Section 27, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the SW1/4 SW1/4 of Section 27, T.16S., R.49E., M.D.B.&M.

Application 37772 was filed by Arthur Edward Harris on April 9, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the E1/2 of Section 6, T.17S., R.49E., M.D.B.&M.¹ The point of diversion is within the SE1/4 NE1/4 of Section 6, T.17S., R.49E., M.D.B.&M.

Application 37779 was filed by Barbara S. Meisner on April 9, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the S1/2 of Section 14, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the NE1/4 SE1/4 of Section 14, T.16S., R.49E., M.D.B.&M.

Application 37780 was filed by Michael John Petroso and Sherriloo Ann Meisner on April 9, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the S1/2 of Section 15, T.15S., R.49E., M.D.B.&M.¹ The point of diversion is within the NE1/4 SW1/4 of Section 15, T.16S., R.49E., M.D.B.&M.

Application 37781 was filed by Richard J. Colquitt on April 9, 1979, to appropriate 6.4 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the E1/2 of Section 16, T.16S., R.49E., M.D.B.&M.¹ The point of diversion is within the SW1/4 NE1/4 of Section 16, T.16S., R.49E., M.D.B.&M.

Application 38336 was filed by Richard C. Records on June 15, 1979, to appropriate 2.6 c.f.s. of underground water for irrigation and domestic purposes 136 acres within the NW1/4 SE1/4 Lot 3 and Lot 7 of Section 12, T.17S., R.48E., M.D.B.&M.¹ The point of diversion is within Lot 3 of Section 12, T.17S., R.48E., M.D.B.&M.

Application 38466 was filed by H. H. Records on July 2, 1979, appropriate 2.0 c.f.s. of underground water for irrigation and domestic purposes 80 acres within the Lots 8 and 9 of Section 7, T.17S., R.49E., M.D.B.&M.¹. The point of diversion is within the Lot 8 of Section 7, T.17S., R.49E., M.D.B.&M.

Application 38467 was filed by H. H. Records on July 2, 1979, to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes 300 acres within the S1/2 of Section 7, T.17S., R.49E., M.D.B.&M.¹ The point of diversion is within the NW1/4 SE1/4 of Section 7, T.17S., R.49E., M.D.B.&M.

Application 39309 was filed by Lon H. Records on October 11, 1979, to appropriate 5.0 c.f.s. of underground water for irrigation and domestic purposes 320 acres within the W1/2 of Section 4, T.17S., R.49E., M.D.B.&M.¹ The point of diversion is within the NW1/4 SW1/4 of Section 4, T.17S., R.49E., M.D.B.&M.

FINDINGS OF FACT

I.

The State Engineer denied Applications 37260, 37306, 37307, 37308, 37309, 37212, 37387, 37392, 37393, 37394, 37396, 37559, 37575, 37634, 37650, 37764, 37765, 37767, 37771, 37772, 37779, 37780, 37781, 38336, 38466, 38467 and 39309 in Ruling #2793 dated December 15, 1982, on the grounds that, "the appropriation of underground water for irrigation purposes as applied for, would conflict with and impair the value of existing rights and be detrimental to the public interest and welfare."²

² State's Exhibit No. 2.

II.

The denial of the applications was timely appealed by their respective owners and a petition for Judicial Review of the State's Engineer's Ruling was filed in the Fifth Judicial District Court, State of Nevada, on January 13, 1983.³

III.

On May 10, 1983, the District Court issued an order remanding the matter to the Respondent State Engineer for the purpose of receiving additional evidence and argument.⁴

IV.

All applicants and interested parties for the subject applications were notified by certified letter of the specific time and place of the Remand hearing.⁵

V.

The State Engineer received no requests for continuance of hearing from any of the subject applicants or their representatives.⁶

VI.

A hearing in the matter of the denied applications was held before representatives of the State Engineer on January 18, 1989 in Carson City, pursuant to the remand order.⁷

³ State's Exhibit No. 4.

⁴ State's Exhibit No. 6.

⁵ State's Exhibit No. 1.

⁶ Records of the office of the State Engineer.

⁷ Transcript pg. 4.

VII.

There was no appearance by the subject applicants or their representatives at the proper time and place set forth in the hearing notice.⁸

VIII.

Subsequently no additional evidence and testimony was received to support the contention that the denial of the subject applications should be overruled.⁹

IX.

The State Engineer received no excuse or explanation from any of the applicants concerning their failure to appear at the January 18, 1989 hearing.¹⁰

CONCLUSION

I.

The State Engineer has jurisdiction of the parties and subject matter of this action and determination.¹¹

II.

Since there is no additional evidence or testimony of record to refute the grounds of the prior denials, this fact, coupled with the instant Applicants' unexcused failure to appear after proper notice leads to the conclusion that Ruling #2793, denying the subject Applications, should ~~not~~_{MB} be affirmed.¹²

⁸ Transcript pgs. 4, 12

⁹ Transcript pgs. 4-33

¹⁰ Records of the Office of the State Engineer.

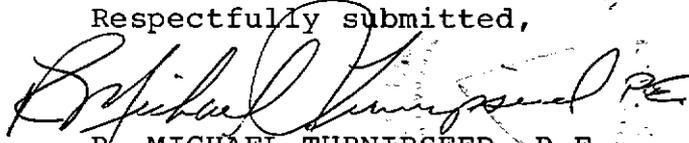
¹¹ NRS 533.325.

¹² Liggett v. State Industrial Insurance System, 99 Nev. 262, 661 P.2d 882. (1983).

RULING

Accordingly, for the forgoing reasons the denial of Applications 37260, 37306, 37307, 37308, 37309, 37212, 37387, 37392, 37393, 37394, 37396, 37559, 37575, 37634, 37650, 37764, 37765, 37767, 37771, 37772, 37779, 37780, 37781, 38336, 38466, 38467 and 39309 in Ruling #2793 is hereby affirmed.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 13th day of
July, 1990



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

37260, 37306, 37307,
37308, 37309, 37312,
37387, 37392, 37393,
37394, 37396, 37559,
37575, 37634, 37650,
37764, 37765, 37767,
37771, 37772, 37779,
37780, 37781, 38336,
38466, 38467, 39309

Capitol Complex
123 W. Nye Lane
Carson City, Nevada 89710
(702) 687-4380

Verdes H. Ueckert
3720 West Bonanza Road
Las Vegas, NV 89107

Michael John Petroso and
Sherriloo Ann Meisner
1013 Date Street
Las Vegas, NV 89108

Jean E. Berk
Rural Route 89070, Box 255
Jean, NV 89019

H. H. Records
P. O. Box 546
Amargosa Valley, NV 89020

Richard W. Berk
564 Ridgeway Loop
Sunnyside, WA 98944

Delbert Berk
P. O. Box 255
Jean, NV 89019

Richard J. Colquitt
P. O. Box 68
Cherokee Village, AR 72525

Michael L. Berk
910 Taylor
Sunnyside, WA 98944

Christine Rose Harris
P. O. Box 1106
Jean, NV 89019

Richard D. Colquitt
2808 Cameo Circle
Las Vegas, NV 89107

Arthur Edward Harris
Star Route 89069, Box 1106
Jean, NV 89019

Rosanna S. Ueckert
3720 West Bonanza
Las Vegas, NV 89107

Barbara S. Meisner
7163 Clearwater
Las Vegas, NV 89117

Dianna Lynn Berk
910 Taylor
Sunnyside, WA 98944

Otto Ravenholt
7163 Clearwater
Las Vegas, NV 89117

Sherry A. Colquitt
2808 Cameo Circle
Las Vegas, NV 89107

Lon H. Records
18582 Manning Drive
Tustin, CA 92680

Richard C. Records
Route 15, Box 546
Amargosa Valley, NV 89020

Kathleen Ann Berk
564 Ridgeway Loop
Sunnyside, WA 98944

Louis K. Devereaux
657 Larkmead Court
San Jose, CA 95117

Richard C. Records
657 Larkmead Court
San Jose, CA 95117

Jean M. Records
Route 15, Box 546
Amargosa Valley, NV 89020

Douglas Ueckert
P. O. Box 254
Jean, NV 89109

Helen V. Colquitt
P. O. Box 68
Cherokee Village, AR 72525

Cheryl L. Records
9044 Priscilla Street
Downey, CA 90242

To Whom It May Concern:

Please be advised our official Ruling on Remand in the matter of Applications 37260, 37306, 37307, 37308, 37309, 37312, 37387, 37392, 37393, 37394, 37396, 37559, 37575, 37634, 37650, 37764, 37765, 37767, 37771, 37772, 37779, 37780, 37781, 38336, 38466, 38467 and 39309, has a typographical error on page 7 under Conclusions paragraph 2. The paragraph should read as follows:

"Since there is no additional evidence or testimony of record to refute the grounds of the prior denials, this fact, coupled with the instant Applicants' unexcused failure to appear after proper notice leads to the conclusion that Ruling #2793, denying the subject Applications, should be affirmed."

These applications have been denied on the grounds as set forth in the Ruling.

Very truly yours,


Larry C. Reynolds, Esq.
Chief Hearing Officer

LCR/pm

cc: Cost Reduction Engineering
ITT/AETNA
Morris De Lee
James W. Johnson, Jr., Esq.
Susan M. Trager, Esq.
John N. Schroeder
Industrial Mineral Ventures
Otto Ravenholt
Ross E. de Lipkau, Esq.
Richard J. Baughman
Richard L. Hafen
Southern Nevada Branch Office