

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

IN THE MATTER OF APPLICATION NO. 57595)
TO APPROPRIATE THE PUBLIC WATERS OF THE)
STATE OF NEVADA FROM AN UNDERGROUND)
SOURCE WITHIN THE LAS VEGAS VALLEY)
GROUNDWATER BASIN, CLARK COUNTY,)
NEVADA.)

RULING
3946

GENERAL

I.

Application No. 57595 was submitted by Scott L. Baranoff on April 30, 1992, to the Southern Nevada Branch Office of the Division of Water Resources. This application was subsequently filed on May 5, 1992, in the Carson City Office of the Division of Water Resources to appropriate 0.1 cfs from an underground source for quasi-municipal purposes within the NW 1/4 SE 1/4 of Section 26, T.22S., R.61E., M.D.B.&M. The proposed point of diversion is described as being in the NW 1/4 SE 1/4 of Section 26, T.22S., R.61E., M.D.B.&M.,¹ which is located within the Las Vegas Groundwater Basin.

II.

Application No. 57595 was accompanied by a supporting map prepared by Mr. Robert Fulstone, Water Rights Surveyor No. 639, which depicted the proposed place of use and point of diversion. The map's jurat indicates that the survey was conducted on March 26, 1992, and the map was stamped, signed and dated April 20, 1992, respectively.¹

IV.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held before the State Engineer in the matter of Application No. 57595 on October 14, 1992, at the Southern Nevada Branch Office of the State Engineer, Las Vegas, Nevada.² Evidence and testimony were received into the record at the hearing and the State Engineer took administrative notice of

¹ Public records of the State Engineer, Application 57594.

² Public record of the State Engineer. State Exhibit No. 1 of the Transcript of Hearing before the State Engineer, October 14, 1992. Hereafter called Transcript.

various matters as more specifically set forth herein. Transcripts of the hearing are a matter of public record in the office of the State Engineer.

V.

For purposes of this ruling and clarification, the State Engineer's Office and the Division of Water Resources are one and the same. Also, Las Vegas Basin and Las Vegas Artesian Basin are one and the same.

FINDINGS OF FACTS

I.

The State Engineer in his administrative capacity is herewith empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved.

II.

A summary of the Orders signed by the State Engineer for the Las Vegas Basin is as follows:

Order No. 175 was signed by the State Engineer on March 10, 1941, designating a portion of the Las Vegas Valley Basin.

Order No. 182 was signed by the State Engineer on February 29, 1944, extending the designated portion of Las Vegas Valley Basin.

Order No. 189 was signed by the State Engineer on November 22, 1946, extending the designated portion of Las Vegas Valley Basin.

Order No. 196 was signed by the State Engineer on December 1, 1949, curtailing irrigation use in the Las Vegas Valley Basin.

Order No. 212 was signed by the State Engineer on November 20, 1953, regulating quasi-municipal allocations in the Las Vegas Valley Basin.

³ Transcript from October 14, 1992, pages 216 through 248.

⁴ NRS 534.120.

⁵ Public records of the State Engineer.

The 1955 Nevada State Legislature enacted Senate Bill No. 104 which allowed the State Engineer to issue temporary permits to appropriate groundwater which may be revoked when water service can be furnished by an entity such as a water district or a municipality engaged in furnishing water.

Order No. 249 was signed by the State Engineer on April 18, 1961, extending the designated portion of Las Vegas Valley Basin.

Order No. 275 was signed by the State Engineer on May 25, 1964, extending the designated portion of Las Vegas Valley Basin.

Order No. 833 was signed by the State Engineer on December 27, 1983, whereby the remaining portion of the Las Vegas Valley Basin was designated.

Order No. 1021 was signed by the State Engineer on March 2, 1990, limiting appropriations to a maximum of 4,000 gallons per day for all uses in the Las Vegas Valley Basin.

Order No. 1054 was signed by the State Engineer on March 23, 1992, stating that as of the date of the Order, applications filed to appropriate groundwater pursuant to NRS 534.120 within the designated Las Vegas Artesian Basin, will be denied.

III.

The State Engineer held an Administrative Hearing on April 13, 1992 in Las Vegas to receive public testimony concerning any modification to Order No. 1054.

IV.

Amended Order 1054 was signed by the State Engineer on April 15, 1992 in which three (3) exceptions to original Order No. 1054 were outlined. Exception number 3 on page 3 specifically states:

"Applicants who began the process of filing an application before March 23, 1992, may file the application which will be processed according to NRS Chapter 533. The applicant must demonstrate that the process began before March 23, 1992 by attaching a copy of a contract or agreement with a licensed water right surveyor. The application and copy of the contract must be received in the office of the State Engineer no later than 5:00 p.m., May 1, 1992."⁵

V.

Testimony and evidence establish that the actual survey for Application No. 57595 was conducted March 26, 1992, with the map being stamped and signed on April 20, 1992.⁶

VI.

Testimony and evidence establish that the proposed place of use of Application No. 57595 is 2.5 acres being one half of an existing 5.0 acre parcel. Furthermore, testimony established that no parcel map or land division are pending or have been filed on any portion of the proposed place of use as of March 23, 1992.⁶

CONCLUSION

I.

The State Engineer has jurisdiction of the subject matter of this action.

II.

A substantial basin-wide overdraft on the groundwater reservoir exists in the Las Vegas Basin as the net pumping draft continues to exceed the perennial yield. Due primarily to this overdraft, land subsidence continues to occur.

III.

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

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

⁶ Transcript from October 14, 1992, pages 216 through 248.

⁷ NRS 533 and 534.

⁸ NRS 533.370.

IV.

The place of use of Application No. 57595 is a portion of an existing 5.0 acre parcel. The 5.0 acre parcel in its present state does not require a water right permit for the approval of parcelling or certificate of land division.

V.

A domestic well as outlined in NRS 534.180, can supply the 5.0 acre parcel in its present state.

VI.

The applicant failed to show sufficient evidence that the water rights process had begun prior to March 23, 1992. Any claim by the applicant that the water rights procedure had begun was premature given the current status of the place of use. The parcelling or land division of the parcel of which the proposed place of use is a part, would not require a water right permit, therefore, the applicant could not have begun the water rights process as outlined in Amended Order 1054.

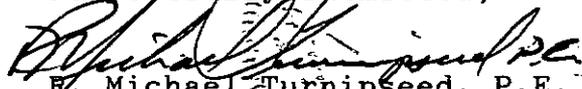
VII.

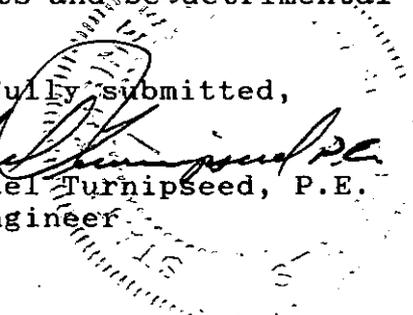
The granting of Application No. 57595 would allow an additional appropriation, which would further aggravate the basin-wide overdraft and declining static water levels, thus would conflict with existing rights and be detrimental to public interest.

RULING

Application Nos. 57595 is herewith denied on the grounds that said application does not meet the exemptions as outlined in Amended Order No. 1054. The appropriation of underground water for quasi-municipal and domestic purposes, as applied for, would conflict with and impair existing rights and be detrimental to the public interest and welfare.

Respectfully submitted,


F. Michael Turnipseed, P.E.
State Engineer



RMT/JK/RC/mm

Dated this 24th day of

March, 1993.