

ORIGINAL

RULING

4117

STATE OF NEVADA

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF WATER RESOURCES

BEFORE R. MICHAEL TURNIPSEED, STATE ENGINEER

In the Matter of Applications

9330, 20998, 22541, 22542,
47047, 47121, 47209, 47264,
48061, 48494, 29973, 32954,
47147, 50561, 50562, 50563.

VOLUME II

TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

TUESDAY, MAY 31, 1994

CARSON CITY, NEVADA

Reported by:

MARY E. BELL, CCR, RPR
Nevada CCR #98

1 declaration through the Secretary of the Interior and the
2 Assistant Secretary of the Interior.

3 THE STATE ENGINEER: Given that, I make the
4 following observations and the following findings of fact.
5 Application 9330 was filed as an amended application on March
6 9th, 1931 and it was filed for irrigation for domestic
7 purposes and not for municipal purposes.

8 Secondly, it was clearly filed to use federal
9 facilities. As Mr. Pelcyger stated, the very first paragraph
10 in the remarks states that this application is for the right
11 to store waters of the Truckee River in the Lahontan
12 Reservoir in addition to being supplemental to all other
13 rights own, acquired or held by the Truckee River and Tribe.
14 Later on it talks about raising Lahontan Reservoir by eight
15 feet and creating an additional 100,000 acre feet of storage.

16 We have a threshold issue here and that is whether
17 or not the federal facilities can be used to put this water
18 to beneficial use. Clearly that was the intention of the
19 application and clearly we have a letter from the Assistant
20 Secretary of the Interior, Water and Science Section, that
21 that cannot happen.

22 Albeit they haven't had a lot of time to review the
23 letter from the Secretary, but we have not had a request to
24 amend the application to anything other than use the water
25 from a point of diversion at Derby Dam and use Lahontan

1 Reservoir to store it.

2 I cannot rule on the advisability or legal
3 foundation or the appealability of the letter. We act based
4 on letters from the federal government all the time. We
5 categorically send a letter to the Bureau of Land Management
6 every single time we get a letter for stock water.

7 We receive a letter back either stating that the
8 applicant is the range user or is not the range user and we
9 categorically reject those that are not the range user. We
10 don't give them five or ten years to become a range user, we
11 reject those and we have been upheld.

12 Likewise, we rejected an application filed for
13 mining that was within the wetlands set aside for the Lake
14 Mead National Recreation area. We sent a letter to the
15 National Park Service. They said this man could not be
16 granted entry to mining within a national recreation area and
17 we rejected that application and we were upheld on appeal.

18 The difference between this application and the
19 Fernley application is that I granted the Fernley application
20 subject to them getting permission from the Secretary of the
21 Interior to use federal facilities to transport their water.
22 Here we clearly have a decision that federal facilities
23 cannot be used to transport the water.

24 I cannot look behind the process on how those
25 decisions were made. I have to take the decisions at their

1 face value. Clearly the application before us is not for a
2 pipeline for municipal use or underground storage. Clearly
3 it is as I stated before for diversion at Derby Dam for use
4 and storage within Lahontan Reservoir.

5 Therefore, I'm going to grant the motion to deny
6 the application summarily based on the threshold issue. No
7 ruling is made on whether there is unappropriated water,
8 whether this application would interfere with existing rights
9 or whether the application would threaten to prove
10 detrimental to the public interest.

11 With that, then, this hearing will be in recess
12 until tomorrow morning at nine o'clock.

13 (A discussion was held off the record.)

14 THE STATE ENGINEER: We'll be back on the record.

15 MR. KOLVET: The point I'm raising, and I'm going
16 to have Mr. DePaoli address it more specifically, was the
17 agreement that was entered into the record with the remaining
18 parties to the original hearing notice, the Tribe, Washoe
19 County, Sierra Pacific and the other parties.

20 You've entered it on the record, but as to the
21 actions which are contemplated within the agreement itself, I
22 don't understand that you have in fact taken action with
23 respect to those things, such as the deferral of our action,
24 of our particular application, the deferral of Sierra's and
25 the other matters that were spoken to in that agreement, and

1 STATE OF NEVADA,)
2 CARSON CITY.) SS.

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I, MARY E. BELL, Official Court Reporter for the State of Nevada, Department of Conservation and Natural Resources, Division of Water Resources, do hereby certify:

That on Tuesday, Wednesday and Thursday, the 31st day of May, the 1st day of June and the 2nd day of June, 1994, I was present for the purpose of reporting in verbatim stenotype notes the within-entitled public hearing;

That the foregoing transcript, consisting of pages 188 through 623, inclusive, includes a full, true and correct transcription of my stenotype notes of said public hearing.

Dated at Carson City, Nevada, this 13th day of June, 1994.

Mary E. Bell

MARY E. BELL, CCR, RPR
Nevada COR #98