

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

IN THE MATTER OF APPLICATIONS 46029,)
46030, 53704, 53829, 53830 AND 53831)
FILED TO APPROPRIATE THE PUBLIC WATERS))
OF AN UNDERGROUND SOURCE WITHIN THE)
BLACK MOUNTAINS AREA GROUNDWATER)
BASIN, CLARK COUNTY, NEVADA.)

RULING

GENERAL

I.

Application 46029 was filed on August 18, 1982, by Alfred A. Wiesner to appropriate 5.0 c.f.s. of water from an underground source for quasi-municipal and domestic purposes within portions of Sections 14, 15, 22 and 23, T.21S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 23, T.21S., R.63E., M.D.B.&M.¹

Application 46030 was filed on August 18, 1982, by Alfred A. Wiesner to appropriate 5.0 c.f.s. of water from an underground source for quasi-municipal and domestic purposes within portions of Sections 14, 22, 23 and all of Section 15; T.21S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 22, T.21S., R.63E., M.D.B.&M.¹

Application 53704 was filed on July 21, 1989 by The Lake At Las Vegas Joint Venture, Inc. to appropriate 2.0 c.f.s. of water from an underground source for purposes within the portions of Sections 14, 15, 22 and 23, T.21S., R.63E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 22, T.21S., R.63E., M.D.B.&M.¹

Application 53829 was filed on September 8, 1989 by The Lake At Las Vegas Joint Venture, Inc. to appropriate 1.0 c.f.s. of water from an underground source for quasi-municipal purposes within portions of Sections 14, 15, 22 and 23 T.21S., R.63E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 22, T.21S., R.63E., M.D.B.&M.¹

¹ Public records in the office of the State Engineer.

Application 53830 was filed on September 8, 1989 by The Lake At Las Vegas Joint Venture, Inc. to appropriate 1.0 c.f.s. of water from an underground source for quasi-municipal purposes within portions of Sections 14, 15, 22 and 23 T.21S., R.63E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 14, T.21S., R.63E., M.D.B.&M.¹

Application 53831 was filed on September 8, 1989 by The Lake At Las Vegas Joint Venture, Inc. to appropriate 1.0 c.f.s. of water from an underground source for quasi-municipal purposes within portions of Sections 14, 15, 22 and 23 T.21S., R.63E., M.D.B.&M. The proposed point of diversion is described as being within the NW1/4 NE1/4 Section 15, T.21S., R.63E., M.D.B.&M.¹

II.

The points of diversion and places of use under the subject applications lie within the Black Mountains Area Ground Water Basin more specifically within the boundaries of what is generally referred to as the Las Vegas Wash, which adjoins Lake Mead to the east.²

III.

Applications 46029 and 46030 were timely protested by the Colorado River Commission on January 21, 1983 for the following reasons and on the following grounds, to wit;

The Colorado River Commission of Nevada (formerly the Division of Colorado River Resources) currently holds a permitted water right to appropriate water in the amount of 638 c.f.s. from the Las Vegas Wash. This right was granted by the State Engineer in Permit No. 29814 on November 28, 1975. Application No's. 46029 and 46030 are protested on the grounds they are in direct conflict with Permit No. 29814 assigned to the Commission. Protestant, Colorado River Commission requests Applications 46029 and 46030 be denied.³

² Applicant's Exhibit No. 17.

³ Records of the office of the State Engineer.

IV.

Protestant, Colorado River Commission withdrew its protest to Applications 46029 and 46030 on March 16, 1990.⁴

V.

Applications 53704, 53829 and Application 53830 were advertised for the statutory period and subsequently no protests were filed.⁵

VI.

Application 53831 was timely protested by Charles Heisen on February 15, 1990 for the following reasons and on the following grounds, to wit:

1. Item 3 in Application is Quasi-Municipal. We believe this means to fill the lake and use for fountains and lawns, a very high evaporation factor, not a reasonable use in a low recharge area. (Water for lawns is a form of irrigation.)
2. Item 12 in Application does not show actual use and this item has not been questioned by the State Engineer on this Application or Numbers 53830, 53829, or 53704.
3. There are other prior applications by Charles Heisen pending action in the same recharge area.
4. Applicant has 3 other applications pending, Numbers 53830, 53829 and 53704 in the same, low recharge area, one of which, #53704, has been improperly approved by the State Engineer for use during construction, while denying Heisen the same right during the same period, to use water for construction of 8 miles of road.

Protestant Charles Heisen requests Application 53831 be denied.⁶

⁴ Records of the office of the State Engineer.

⁵ Records of the office of the State Engineer.

⁶ State's Exhibit No. 11.

VII.

All of the subject parties were duly notified as required under NRS 533.365(3), and a hearing was held on March 19, 1990 for the purpose of taking evidence and testimony deemed necessary by the State Engineer for a full understanding of the above referenced applications and the protest.⁰ A significant amount of testimony and evidence was developed at the subject hearing as all parties were provided a full opportunity to present their respective positions. The State Engineer took administrative notice of certain matters more fully set forth in the transcripts of the hearing.⁷

FINDINGS OF FACT

I.

Protestant Charles Heisen withdrew the first and second objections in his protest of application 53831, at the hearing.⁸

II.

Full title interest to Application 46029 and Application 46030 has been transferred from Alfred E. Wiesner to the Lake At Las Vegas Joint Venture, Inc. via Quitclaim Deed executed on March 15, 1990.⁹

III.

Protestant Charles Heisen briefly testified that his protest to Application 53831 was based on the contention that the appropriation of underground water represented by Application 53831 would impair prior pending applications filed by Heisen within the same recharge area. Heisen indicated that the location of Application 53831 well site was situated at the head of a narrow canyon where any recharge would be "impossible".¹⁰

7 Transcript of Administrative Hearing March 19, 1990.

8 Transcript pg. 9.

9 Applicant's Exhibit No. 16.

10 Transcript, pgs. 9-11.

IV.

Applicant's expert witness testified that the distance between the proposed Heisen wells and the nearest Lake At Las Vegas points of diversion is approximately 4.9 miles, with this entire distance comprised of either basalt units or a continuous outcrop of the Muddy Creek Formation. The witness further testified that the predominance of siltstone within the Muddy Creek Formation and the discontinuous nature of its gravels combined with the basalt units to form an effective groundwater barrier between the applicant's and protestant's applications. Testimony provided by the witness indicated that formation thicknesses for the Muddy Creek formation which overlies the Horse Springs formation within the Lake At Las Vegas Project area ranged from zero along the contact areas to a maximum of 900 feet along the eastern portions of the property.¹¹

V.

Total groundwater underflows within the project area were estimated by the witness to fall within a range of 2,200 acre-feet annually to 4,400 acre-feet annually, with the majority of this flow ultimately discharging into the Lake Mead Colorado River System. It was further noted that Nevada does not get credit for this discharge in accounting for it's share of Colorado River water.¹²

VI.

The expert offered additional testimony indicating that the applicants would construct the proposed wells within a specific set of design constraints to prevent capture by such wells, of any return flow to Lake Mead that can be credited to Nevada.¹³

¹¹ Transcript, pgs. 18, 26-27.

¹² Transcript, pgs. 38-50.

¹³ Transcript, pgs. 19-23.

VII.

Due to the above evidence the State Engineer finds that there is an appropriated water in the source and that water can be put to a beneficial use without interference with existing rights.

VIII.

The State Engineer further finds that the intendedness in the proposed applications are in the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction in the parties and subject matter of this action pursuant to NRS 533.365, NRS 533.370 and NRS 533.020(1).

II.

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 in the proposed source of the supply.
2. The proposed use conflicts with existing rights, or
3. The proposed use threatens to prove detrimental to the public interest.

III.

Unrebutted evidence and testimony in this record indicates the interference effects of pumpage under the proposed applications on protestants water levels would be nil. Therefore the State Engineer concludes that there is unappropriated water in the source and that the intended uses are in the public interest.

IV.

Applications 46029, 46030, 53704, 53829, 53830 and 53831 shall be approved subject to the following terms and conditions:

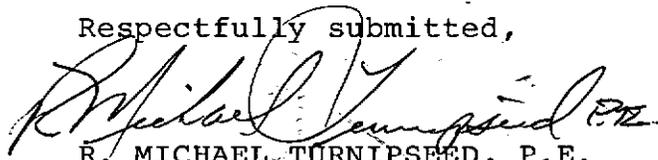
A. All of the applicants wells that are located within a quarter mile of the Las Vegas Wash and or penetrate shallow portions of the Muddy Creek Formation will be constructed with a minimum of 100 feet of cemented casing below the elevation of the adjacent wash.

B. All of the applicants wells must be constructed so that they draw only upon the Horse Springs Formation as a source for groundwater appropriation.

RULING

The protest to Application 53831 is herewith overruled and the subject applications are hereby approved, subject to payment of statutory fees and the terms and conditions set forth herein above.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Date this 12th day of,
July 1990