

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

IN THE MATTER OF APPLICATIONS 53682,)
53683, 55396, 55397, 55398 AND 55399)
FILED TO APPROPRIATE THE WATER OF)
UNNAMED SPRINGS IN THE EASTERN PART)
OF SODA SPRING VALLEY, MINERAL)
COUNTY, NEVADA.)

RULING

3977

GENERAL

I.

Application 53682 was filed on July 12, 1989 by LJW Corporation to appropriate 0.22 c.f.s. of water from an unnamed spring for milling and domestic uses within the S1/2 SE1/4 Section 29, S1/2 SW1/4 SW1/4 Section 28, N1/2 NE1/4 Section 32, and NW1/4 NW1/4 Section 33, all in T.6N., R.35E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 29, T.6N., R.35E., M.D.B.&M.¹

Application 53683 was filed on July 12, 1989 by LJW Corporation to appropriate 0.23 c.f.s. of water from an unnamed spring for milling and domestic uses within the S1/2 SE1/4 Section 29, S1/2 SW1/4 SW1/4 Section 28, N1/2 NE1/4 Section 32, and NW1/4 NW1/4 Section 33, all in T.6N., R.35E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 29, T.6N., R.35E., M.D.B.&M.²

Application 55396 was filed on October 22, 1990 by Robert Hungerford Sr., to appropriate 0.25 c.f.s. of water from spring sources for quasi-municipal use within the N1/2 SW1/4 and W1/2 SE1/4 Section 29, NW1/4 NE1/4 Section 32, all in T.6N., R.35E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 29, T.6N., R.35E., M.D.B.&M.³

¹ File No. 53682, Public record in the office of the State Engineer.

² File No. 53683, Public record in the office of the State Engineer.

³ File No. 55396, Public record in the office of the State Engineer.

Application 55397 was filed on October 22, 1990 by Robert Hungerford Sr., to appropriate 0.50 c.f.s. of water from spring sources for irrigation of 70 acres within the N1/2 SE1/4 and W1/2 SE1/4 Section 29, NW1/4 NE1/4 Section 32, all in T.6N., R.35E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 29, T.6N., R.35E., M.D.B.&M.⁴

Application 55398 was filed on October 22, 1990 by Robert Hungerford Sr., to appropriate 0.25 c.f.s. of water from spring sources for quasi-municipal use within the N1/2 SW1/4 and W1/2 SE1/4 Section 29, NW1/4 NE1/4 Section 32, all in T.6N., R.35E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 29, T.6N., R.35E., M.D.B.&M.⁵

Application 55399 was filed on October 22, 1990 by Robert Hungerford Sr., to appropriate 0.50 c.f.s. of water from spring sources for irrigation of 70 acres within the N1/2 SW1/4 and W1/2 SE1/4 Section 29, NW1/4 NE1/4 Section 32, all in T.6N., R.35E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 29, T.6N., R.35E., M.D.B.&M.⁶

II.

Informal protests⁷ to the granting of Applications 53682 and 53683 were filed by Roy Atkins and Retta Mitchell Atkins on the grounds:

That Roy Atkins and Retta Mitchell Atkins legally own both the land and the water rights.

The protestants to Applications 53682 and 53683 request that these applications be denied.

⁴ File No. 55397, Public record in the office of the State Engineer.

⁵ File No. 55398, Public record in the office of the State Engineer.

⁶ File No. 55399, Public record in the office of the State Engineer.

⁷ Informal protests in Files 53682 and 53683, public record in the office of the State Engineer. These protests were received after the final date for filing protests.

Timely protests⁸ to the granting of Applications 55396, 55397, 55398 and 55399 were filed by LJW Corporation on the following grounds:

L.J.W. Corp. filed with the State Engineer of Nevada upon these springs (file #53682-53683) July, 1989. The south spring was gathered into a reservoir since the 1800's and utilized by us for 9 yr.. The north spring was piped north (where our diversion will go) for a separate venture several years ago. We have been assured by your office that only the diversion was necessary to complete our claim. Upon this assurance, we have been acquiring the diversion property and milling equip., survey map and condemnation to complete our mill.

The protestant requests that subject applications be denied.

Timely protests⁹ to the granting of Applications 55398 and 55399 were filed by Terry Crawford of the Nevada Department of Wildlife (NDOW) on the following grounds:

The Sodaville area is the site of a 1947 transplant of Railroad Valley Springfish, which have become established in the complex of springs which today comprise Soda Springs. This species was listed in the April 30, 1986 Federal Register as a threatened species. Lacking a working cooperative agreement with Mr. Hungerford to protect this fish and its habitat, the Department of Wildlife must recommend denial of the permit.

The protestant requests that subject applications be denied, unless a cooperative agreement with the applicant can be made.

III.

On August 1, 1989, James E. Schaefer and Linda Marceвич,

⁸ Protests filed by LJW Corporation located in Files 55396, 55397, 55398 and 55399, public record in the office of the State Engineer.

⁹ Protests filed by the Nevada Department of Wildlife located in Files 55398 and 55399, public record in the office of the State Engineer.

principal owners of LJW Corporation, filed a Civil Complaint¹⁰ against Roy Atkins, et. al., owner of the land described as the proposed place of use (Sodaville site) and the land on which the proposed points of diversion lie in Applications 53682 and 53683. In the complaint, James E. Schaefer and Linda Marceovich requested that the court declare that an oral agreement between LJW Corporation and John Sinkey, Sr. (deceased, former owner of the Sodaville site) be binding. This would allow LJW Corporation to continue occupying the Sodaville site. The plaintiffs supported this request in the complaint by stating that occupying the property essential for LJW Corporation due to its location and "also due to the water rights appurtenant thereto and which are necessary to the beneficiation of the ores to be treated."

On January 30, 1990, the Court rendered Order Granting Motion for Summary Judgement¹⁰ in which the plaintiffs were ordered to remove their property from the Sodaville site and surrender possession of the property to the record owners Roy and Retta Atkins by March 16, 1990.

IV.

A formal field investigation was conducted by representatives of the State Engineer at Sodaville on February 28, 1991.¹¹ Those in attendance were: Willie Wolfe, Robert Hungerford, Roy Atkins, Mike Sivon, John Zane, John Palm, and Gene Clock.

FINDINGS OF FACT

I.

LJW Corporation is not presently occupying and does not have a legal right to occupy the property described as the proposed place of use of Applications 53682 and 53683. LJW Corporation is not able to legally access the property where the proposed points of diversion of Applications 53682 and 53683 are located. The State Engineer finds that the applicant to Applications 53682 and

¹⁰ James E. Schaefer and Linda Marceovich v. Roy Atkins, et.al., No. 6847, District Court for the Fifth Judicial District of Nevada, August 1, 1989.

¹¹ Report Field Investigation No. 878, Public record in the office of the State Engineer.

53683 is not able to place the water to beneficial use, because he cannot legally access or occupy the property described as the proposed place of use.

II.

Robert Hungerford, the applicant of Applications 55396 through 55399, defaulted on the purchase of the property contained in the proposed place of use of said application,¹² Mr. Hungerford has ceased all operations and left Nevada.¹³ The State Engineer finds that the applicant to Applications 55396 through 55399 is not able to place the water to beneficial use because he cannot legally access or occupy the property described as the proposed place of use.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.¹⁴

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:¹⁵

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use or change conflicts with existing right, or
- C. The proposed use or change threatens to prove detrimental to the public interest.

III.

LJW Corporation is not able to place the water to beneficial

¹² The beneficiary of the Deed of Trust filed a Trustee's Deed which indicates that he, the beneficiary, had repossessed the property from Mr. Hungerford. The document is filed in File No. 55396.

¹³ Telephone conversation between Jonathan C. Palm, employee of the Nevada Division of Water Resources and Mr. Hungerford, September 1, 1992.

¹⁴ NRS 533.

¹⁵ NRS 533.370.

use because it cannot legally occupy the property described as the place of use on Applications 53682 and 53683, and because it cannot legally access the property on which are located the proposed points of diversion of Applications 53682 and 53683. It is not in the public interest to approve applications wherein the applicant cannot demonstrate the ability to place the water to beneficial use.

IV.

The applicant of Applications 55396 through 55399 is not able to place the water to beneficial use because he cannot legally occupy the property described as the proposed place of use in said applications. It is not in the public interest to approve applications wherein the applicant cannot demonstrate the ability to place the water to beneficial use.

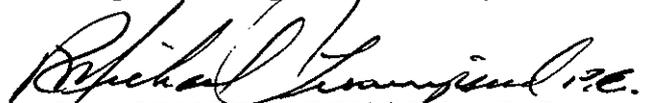
RULING

Applications 53682 and 53683 are hereby denied on the grounds that it is not in the public interest to grant applications for milling purposes on lands that the applicant does not own or control and cannot demonstrate the ability to place the water to beneficial use.

Applications 55396, 55397, 55398 and 55399 are hereby denied on the grounds that it is not in the public interest to grant applications for irrigation and for quasi-municipal uses on lands that the applicant does not own or control and cannot demonstrate the ability to place the water to beneficial use.

No ruling is made on the protests to Applications 55396, 55397, 55398 and 55399.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/pm

Dated this 7th day of
May, 1993.