

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

IN THE MATTER OF APPLICATIONS )  
58372, 58373, 58444, 58445 AND )  
58446 FILED TO APPROPRIATE THE )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE AMARGOSA VALLEY )  
GROUNDWATER BASIN (230), NYE )  
COUNTY, NEVADA. )

RULING

# 4548

GENERAL

I.

Application 58372 was filed on December 4, 1992, by Amargosa Resources, Inc. (ARI) to appropriate 8.0 cubic feet per second (cfs) of the underground waters of the Amargosa Valley Groundwater Basin, Nye County, Nevada, for municipal purposes. The proposed place of use is described as being within Clark County as defined by NRS § 243.035 through 243.040, inclusive, and the Amargosa Desert Groundwater Basin. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 25, T.15S., R.49E., M.D.B.&M.<sup>1</sup>

II.

Application 58373 was filed on December 4, 1992, by ARI to appropriate 8.0 cfs of the underground waters of the Amargosa Valley Groundwater Basin, Nye County, Nevada, for municipal purposes. The proposed place of use is identical to that described under Application 58372. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 29, T.15S., R.49E., M.D.B.&M.<sup>2</sup>

III.

Application 58444 was filed on December 28, 1992, by ARI to appropriate 8.0 cfs of the underground waters of the Amargosa Valley Groundwater Basin, Nye County, Nevada, for municipal purposes. The proposed place of use is identical to that described

<sup>1</sup> File No. 58372, official records in the office of the State Engineer.

<sup>2</sup> File No. 58373, official records in the office of the State Engineer.

under Applications 58372 and 58373. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 16, T.15S., R.49E., M.D.B.&M.<sup>3</sup>

IV.

Application 58445 was filed on December 28, 1992, by ARI to appropriate 8.0 cfs. of the underground waters of the Amargosa Desert Groundwater Basin, Nye County, Nevada, for municipal purposes. The proposed manner of use is identical to that described under Applications 58372, 58373 and 58444. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 15, T.15S., R.49E., M.D.B.&M.<sup>4</sup>

V.

Application 58446 was filed on December 28, 1992, by ARI to appropriate 8.0 c.f.s. of the underground waters of the Amargosa Desert Groundwater Basin, Nye County, Nevada, for municipal purposes. The proposed place of use is identical to that described under Applications 58372, 58373, 58444 and 58445. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 36, T.15S., R.49E., M.D.B.&M.<sup>5</sup>

VI.

Applications 58372, 58373, 58444, 58445 and 58446 request a diversion rate totaling 40 cfs with a total appropriation of 25,000 acre-feet per year for municipal use. These applications seek to appropriate water from water rights which according to Amargosa Resources, Inc. have been forfeited due to non-use.<sup>1-5</sup>

VII.

All of the subject applications seek to appropriate water from points of diversion which are located upon land currently

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<sup>3</sup> File No. 58444, official records in the office of the State Engineer.

<sup>4</sup> File No. 58445, official records in the office of the State Engineer.

<sup>5</sup> File No. 58446, official records in the office of the State Engineer.

controlled by the Federal Government, more specifically, the United States Department of the Interior, Bureau of Land Management.

VIII.

Nevada Revised Statute Chapter § 533.363(1) requires the State Engineer to notify the County Commissioners if water for which a permit is requested is to be used in a county other than the county in which it is to be appropriated. On April 8, 1993, the State Engineer so notified the Nye County and Clark County Commissioners. Both Boards of County Commissioners notified the State Engineer of their recommendation that ARI's applications be denied.

IX.

All of the subject applications were timely protested. In all there were twenty protests filed in the office of the State Engineer.<sup>1-5</sup>

FINDINGS OF FACT

I.

Applications 58372, 58373, 58444, 58445 and 58446 were filed during December 1992 to appropriate 25,000 acre-feet annually of underground water for municipal purposes within a place of use which was described in general terms as the Amargosa Valley Groundwater Basin and Clark County. During 1993 ARI made proposals to the Southern Nevada Water Authority to sell water and water rights for use in the Las Vegas Basin.<sup>6</sup> The State Engineer finds that the Clark County Commission voted in the summer of 1993 to reject any plans for taking any water which might be developed by ARI.<sup>7</sup>

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<sup>6</sup> On November 4 and 5, 1993, Southern Nevada Water Authority and the Colorado River Commission held a water summit at which ARI among others presented proposals for bringing additional water to the Las Vegas area. Briefing Papers for Water Summit Proposals at p. 6, official records in the office of the State Engineer.

<sup>7</sup> Minutes from meeting of the Clark County Board of County Commissioners, July 20, 1993, pp. 104-105.

II.

On July 28, 1994, the applicant filed Applications 60272, 60273, 60274, 60275 and 60276 in the office of the State Engineer which requested to change the manner of use and the place of use of ARI's previous Applications 58372, 58373, 58444, 58445 and 58446 from municipal use within Clark County and the Amargosa Valley Groundwater Basin to wildlife purposes within the Amargosa Valley Groundwater Basin.<sup>8</sup> The State Engineer finds that the applicant's request to change the manner of use and place of use of their previous applications indicated that ARI had forsaken any plans which were contemplated for developing the water for municipal purposes in the Amargosa Valley Groundwater Basin or Clark County under Applications 58372, 58373, 58444, 58445 and 58446.

III.

Information contained within the records of the State Engineer's office indicates that under the change applications ARI was making a proposal which would have transferred any water rights granted under the change applications to the Federal Government for protection of the endangered and indigenous species in the Ash Meadows discharge area.<sup>9</sup> The proposal was to leave the water in the ground to take its natural course, wherever that might be. The State Engineer finds that the applicant's specific purposes for the request to change the manner of use and the place of use of their previous applications was the eventual sale or transfer of these rights to a second party for "wildlife" purposes. The State Engineer further finds that to leave the water in its natural state in the ground does not constitute an appropriation for a beneficial use under Nevada law.

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<sup>8</sup> File Nos. 60272, 60273, 60274, 60275 and 60276, official records in the office of the State Engineer.

<sup>9</sup> Letter from Brent Kolvet, Esq. (counsel of record for ARI) to State Engineer, dated August 27, 1996, File No. 58372, official records in the office of the State Engineer.

IV.

By letter dated June 24, 1996, the State Engineer informed ARI that its change applications did not fall into the category described in NRS § 533.324, which provides for change applications, as Nevada law allowing changes in the point of diversion, place of use and/or manner of use presumes that the water is beneficially used or could be beneficially used under the original permit or application. An earlier priority date may not be retained by using change applications until a project can be formulated for use of water requested appropriation. Therefore, under the provisions of NRS § 533.375 and NRS § 533.370, in reference to the base water right applications, the State Engineer requested ARI submit the following information in order to enable the State Engineer to properly guard the public interest.<sup>1-5</sup>

1. The total cost of the project and the total dollar value of its benefits.
2. The names and addresses of the directors and officers of Amargosa Resources, Inc. as incorporated in 1992. Also, the amount of the corporation's authorized and paid up capital.
3. The financial feasibility and funding for the project, including names and letters of credit from each investor.
4. Since Amargosa Resources, Inc. is not a municipality and the applications were filed for municipal purposes contracts, agreements or options with municipalities that are able to put the water to beneficial use within the twenty years stated on each application.
5. Deeds, leases, or special use permits that show access to the lands described as the points of diversion.
6. Since the points of diversion are presumably not close to the places of use, specify rights-of-way and/or easements from the points of diversion to the places of use. If the points of diversion or conduit routes involve Federal lands, reports of environmental work that have been done in support of the project.

On or about August 27, 1996, ARI responded to the State Engineer's June 24, 1996, letter and indicated that since the State Engineer had in effect rejected the change applications ARI needed additional time to refocus its efforts toward the original purposes set forth in the applications and it was not in a position to finalize some of the information requested. By letter dated August 30, 1996, the State Engineer informed the applicant that the change applications had not actually been rejected, but rather could not be considered unless it could be demonstrated that the water under the base water right applications could be used for a beneficial purpose, and granted the applicants request for additional time through November 1, 1996, to submit the information requested.<sup>1-5</sup>

The State Engineer finds that on November 1, 1996, ARI submitted a package for a development named "Valle del Sol" a Planned Recreational Retirement Community. This proposal consisted of a development outline for a proposed large scale retirement community located within the Amargosa Valley. Additionally information contained within the development outline indicated that ARI had been in communication with a party interested in acquiring ARI's pending applications for development purposes. An examination of the records of the State Engineer's office failed to reveal any mention of a proposal for development of a retirement community prior to November 1, 1996.

The State Engineer finds that the utilization of water to support the development of the retirement community is a relatively new proposal which is unrelated to the original purpose for which the subject applications were filed. The State Engineer further finds that this latest proposal represents an attempt on the part of the applicant to find a project to support its applications and to justify the continued existence of the applications. The State Engineer further finds that the "Valle del Sol" project does not indicate the ownership of any land upon which the water would be

beneficially used, but rather speculates land may obtained pursuant to an exchange agreement or purchased in the Amargosa Valley in the future.

V.

An application to appropriate water is a request to develop a specific amount of water from a specific point of diversion for a specific use within a well defined place of use.<sup>10</sup> Over the period of time from December 1992 through November 1, 1996, ARI has proposed at least three separate unrelated projects in which to utilize the water sought under their various applications. The State Engineer finds there has been no single long term project proposed for the subject applications since their initial filing in December 1992. The State Engineer finds that ARI went after water merely in hopes of selling it to someone else for a profit upon finding a project in which the water could be used.

VI.

The November 1, 1996, response provided, at best, only general answers to a limited number of the State Engineer's questions. The State Engineer finds that there is nothing in the individual application files, in ARI's answers to the June 24, 1996, inquiry or in the record of the State Engineer's office that would indicate that ARI has the financial ability to develop its applications or is able to obtain the necessary legal authority to divert, transport and develop any water from, to and upon lands which are for the most part currently controlled by the federal government.

VII.

The State Engineer recognizes that the Nevada Legislature is becoming increasingly concerned over applications and permits filed for speculation where the sole intent of the applicant is not to place the water to a beneficial use, but merely to profit from the

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<sup>10</sup> NRS § 533.335.

sale of water rights to interested parties.<sup>11</sup> ARI applied for a very significant quantity of water and then went looking for a project. First, it went looking to Clark and Nye Counties as a potential buyer for any water it acquired. When that did not work it filed the change applications and tried a wholly novel approach of keeping the water in the groundwater basin and selling the water to the Federal Government for wildlife purposes. After ARI was informed that the change applications did not fall within the provisions of NRS § 533.324 it went shopping for a developer who might be willing to purchase any water rights granted under the original applications. The State Engineer finds that ARI's attempts to transfer their applications first to Clark County for municipal purposes, then to the Federal Government for wildlife purposes and finally to a developer for a retirement community in the Amargosa Valley is by definition speculation. The applicant itself never had a specific project pursuant to which it would put the water to beneficial use.

#### CONCLUSIONS

##### I.

The State Engineer has jurisdiction over the parties and of the subject matter of the action and determination.<sup>12</sup>

##### II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>13</sup>

- A. there is no unappropriated water at the proposed source, or

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<sup>11</sup> NRS § 533.370(1). See also, Report to the 1995 Legislature for the Interim Committee to Study Use, Allocation and Management of Water (LCB Bulletin #95-4).

<sup>12</sup> NRS § Chapters 533 and 534.

<sup>13</sup> NRS § 533.370.

- B. the proposed use conflicts with existing rights, or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interests. The State Engineer concludes that the applicant has failed to provide sufficient information to adequately guard the public interest.

IV.

The State Engineer concludes that since ARI is not a municipality, or the steward of the State's wildlife, that the subject applications were filed solely for possible resale and speculation. The State Engineer concludes that ARI put the cart before the horse in that it applied for water before having a definite project. NRS § 533.370(1)(c)(2) provides that an applicant must provide the State Engineer proof satisfactory of his financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence. The only information provided in "Valle del Sol" materials was that a construction/development company had entered into an agreement with ARI to acquire any water rights granted under the original applications for development purposes at a location to later be determined.

V.

The records of the State Engineer's office contain no evidence that the applicant has the financial ability to place the water sought under Applications 58372, 58373, 58444, 58445 and 58446 to a beneficial use. The State Engineer concludes that it would not be in the public interest to approve applications where the applicant has no intention itself of ever building a project, where

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<sup>14</sup> NRS § 533.375.

the applicant cannot demonstrate the financial ability to place the water to beneficial use and the only information provided as to a project under which the water would be used is that a developer has an agreement to acquire water rights for development purposes at an unknown location.

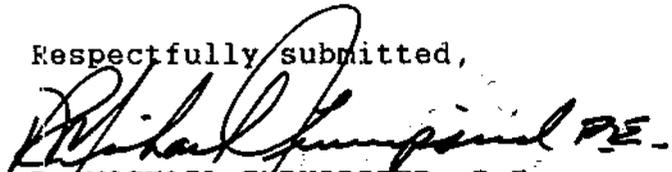
VI.

All of the subject applications seek to appropriate, transport and develop water from lands which are controlled primarily by the federal government. There is no evidence contained within the State Engineer's office which would indicate the applicant has or can obtain the legal authority to this land even though the applicant was required to provide such information. The State Engineer concludes that it would not be in the public interest to approve applications for use upon lands where the applicant does not control both the proposed well locations and the proposed places of use.

RULING

Applications 58372, 58373, 58444, 58445 and 58446 are hereby denied on the grounds that the approval of the subject applications would not be in the public interests. The applicant has no specific project in mind for any water granted under these applications, but rather is merely looking for a buyer in order to profit from the sale of the water. No ruling is made on the merits of the protests.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MDB/ab

Dated this 25th day of  
July, 1997.