

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Appellant,

vs.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Respondents.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Appellants/Cross-Respondents,

vs.

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Respondent/Cross-Appellant.

No. 84345

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Issue 4: Capital Improvement Plan

The City has a Capital Improvement Plan for its infrastructure. This five-year plan is reviewed and updated annually by the City Council. This allows for changes in revenue and expenditure patterns and changes in priorities. The Capital Improvement Plan process "... provides order and continuity to the repair, replacement, construction or expansion of the City's capital assets."⁹ The five-year Capital Improvement Program is published and adopted annually in a separate document.

Capital expenditures are defined by the City as:

any undertaking or any physical improvement to land, provided the title will rest with the City of Las Vegas and the project has an estimated useful life in excess of five years and an estimated cost in excess of \$20,000.¹⁰

These expenditures compete for a finite supply of funds. Other funding requirements of the City include operations, maintenance, personnel and contracted services. Therefore, capital improvement decisions affect the availability (timing and dollars) of monies to support growth. Again, these are related to the land uses of the approved General Plan.

The Capital Improvement Plan includes undertakings "to construct, renovate, improve. . ." An interpretation of that phrase is a prioritization of construction of new facilities to support growth, to reduce existing deficiencies, or to remain abreast of replacement requirements. The competition for fiscal resources requires a coordinated inventory of information about existing development, approved development (developing and unbuilt) and approved land uses in order to ascertain whether the City can fund or require funding of

capital improvements budgets.

Capital expenditures should be analyzed by budget item categories such as "new growth" or "rehabilitation". These categories can allow the City to regularly and promptly review the allocation of monies by category and by geographical area. A further comparison can then be made between costs required to support these categories and their relationship to approved land use and development plans. At the very least, an appreciation of fiscal realities can be balanced against the health, safety and welfare issues arising in the daily political forum.

4A.3 Goal, Objectives, Policies, and Programs

The following hierarchy of the overall Goal, and supporting Objectives, Policies and Programs, reflect applicable “actions” of the “Las Vegas 2000 and Beyond” citizen’s strategic planning program, and subsequent review by the General Plan Citizens Advisory Committee of the 1985 General Plan Goals, Objectives, Policies and Programs, revised to address current conditions and issues.

GOAL: Provide efficient and cost-effective wastewater collection and treatment to support land use and conserve resources.

Objective A: Develop a method for analyzing the effects of development proposals on the resources of the City.

Policy A1: Adopt a Sewer Collection and Treatment System Master Plan, which shall reflect the effects of projected growth in the land use portion of the adopted General Plan.

Program A1.1: Develop and recommend for adoption by City Council, a Sewer Collection and Treatment System Master Plan for the City.

Program A1.2: Review the Sewer Collection and Treatment System Master Plan and affected capital improvement programs annually, with a complete update of this Plan every five years from 1993.

Policy A2: Size sewer collection line extensions to accommodate designated development densities shown in the adopted Future Land Use Map, Sewer Collection and Treatment System Master Plan and in accordance with standard engineering design practice.

Program A2.1: Update and maintain accurate sewer district maps.

Program A2.2: Continue to monitor and record existing sewer line flows and capacities.

Program A2.3: Prepare and adopt 5, 15 and 25 year Sewer Collection and Treatment System Master plans that conform to adopted General Plan land use maps and text.

Policy A3: Establish an equivalent level of service for the various major categories of land use in order to measure the effects of development proposals on the wastewater systems.

Program A3.1: Establish a quantitative service standard for measuring a level of service for use by the City, developers and other entities.

Program A3.2: Monitor and annually update this standard, in order to assure that it is realistic and measures the consumption of resources.

Policy A4: Develop a process to set priorities which determines the order of funding for wastewater systems.

Program A4.1: Develop and implement a capital programming priority process to incorporate, at a minimum, the following:

- a. Projects directly related to protecting the public health, safety and welfare, such as new facilities that reduce or eliminate deficient systems.
- b. Repair and rehabilitation of existing systems.
- c. Infill.
- d. New facilities needed to serve the City in the next five years.

Program A4.2: Code the capital budget to show the number and value of expenditures of the projects in Program A1.1.

Policy A5: Annually evaluate, adopt and publish sewer fees to reflect the costs of capital investment, operations, maintenance, rehabilitation and expected growth.

Program A5.1: Develop and adopt a strategy for allocating costs to fees. Fees may be generated by, but not limited to, the following: monthly rates, special improvement districts, developer fees, sanitation funds, or a combination of the above.

Objective B: Review and develop standards for the timing and allocation of City resources which support land development and growth.

Policy B1: Review the existing interlocal agreement between the City and North Las Vegas in light of wastewater services provided to development by North Las Vegas.

Program B1.1: Initiate formal communication with the City of North Las Vegas to determine and regularly monitor their expected development as proposed by their adopted Master Plan.

Program B1.2: Evaluate the effects of the above proposed development on the capacity of the City wastewater collection and treatment system.

Program B1.3: Initiate an interlocal agreement which prohibits North Las Vegas from extending sanitary sewer lines into other jurisdictions, including the City of Las Vegas and areas likely to be annexed into the City.

Policy B2: Review the "growth line" concept and possibly establish a service area boundary which is related to the adopted land use plan map.

Program B2.1: Determine whether a service area boundary which reflects the effects of growth caused by traffic, sewer and water availability, is necessary to monitor and manage the growth of the City.

Program B2.2: Modify the adopted General Plan land use element map to reflect any adopted service boundary and any necessary changes in the adopted land use map or plan text.

Objective C: Conserve potable water and maintain an adequate return flow credit to the Colorado River.

Policy C1: Investigate the feasibility for requiring wastewater treatment and collection within development, in order to provide for on-site irrigation or resale to other users in remote areas.

Program C1.1: Determine, inventory and evaluate the need for irrigation of existing and proposed public and other facilities located in areas not yet served by the City wastewater collection system.

Program C1.2: Determine if the City should construct and operate a wastewater treatment plant in areas not yet served by the existing wastewater system in order to provide water for reuse in irrigation, firefighting and resale, thereby reducing potable water consumption.

Policy C2: In order to assure the maximum return flow credits to the River, support the reduction of primary permits which allocate amounts of returned water from the Las Vegas Wash to other uses.

4A.4 Evaluation and Implementation Matrix

The following Sewer Collection and Treatment System Evaluation and Implementation Matrix (EIM - see next page) was prepared as a measurable summary of the above Sewer Collection and Treatment Policies and Programs. The EIM is to be used:

- as a method of measuring the implementation progress of the General Plan
- as a budgeting document for specific Sewer Collection and Treatment System programs
- as a tool for further developing work programs

The following abbreviations apply to the Evaluation and Implementation Matrix

City Departments

CA City Attorney
CM City Manager
CP Community Planning &
Development
FN Finance
PW Public Works

Other Agencies/Jurisdictions

SNWA Southern Nevada Water
Authority

4A.4 EVALUATION IMPLEMENTATION MATRIX: SEWER COLLECTION AND TREATMENT SYSTEM

POLICY (PROGRAM)	SUMMARY	RESPONSIBLE DEPARTMENTS	FY OF IMPLEMENTATION	SPECIFIC ACTION/PRODUCT	REMARKS
A1(A1.1,2)	Develop, recommend Sewer Collection and Treatment System Master Plan; update in accordance with Plan. Adopted capital program budgets to conform to Sewer Collection and Treatment Master Plan.	PW, CP, CM	1993	Annually review and adopt Sewer Collection and Treatment System Master Plan and CIP that conform to the General Plan.	
A2(A2.1-3)	Size collection system extensions to accommodate designated development densities.	PW, CP	1993	Inventory and measure sewage flows, line capacities, treatment capacities. Evaluate and approve development and line extensions based on need. Sewer Master plans conform to General Plan.	
A3(A3.1,2)	Establish, monitor and update levels of service (LOS) by land use categories.	PW, CM	1993	Annually review and adopt reviewed LOS for use in evaluating system surpluses and deficiencies and to measure efforts of proposed growth.	Inform CP&D for use in evaluation of developments.
A4(A4.1)	Establish a means to set priorities for capital programming funding of wastewater systems.	PW, FN, CM	1993	Priority scheme used for funding improvements by City monies, evaluating development proposals and cost sharing.	Priorities include protecting public health, safety, welfare, repair and rehab, infill, new growth. Inform CP&D for use in evaluation of developments.
A5(A.5.1)	Annually evaluate, publish and adopt sewer user fees that reflect all portions of developing and maintaining a sewerage system. Develop funding mechanisms for planning, development, operations.	PW, FN	1993	Documented cost-based and expansion-based fees, updated annually.	

POLICY (PROGRAM)	SUMMARY	RESPONSIBLE DEPARTMENTS	FY OF IMPLEMENTATION	SPECIFIC ACTION/PRODUCT	REMARKS
B1(B1.1-3)	Review existing City and North Las Vegas interlocal agreement for sewage collection and treatment, as it relates to North Las Vegas growth projections and actions.	CP, PW, CA, CM	1992	Communication with evaluation of North Las Vegas plans by City; review evaluation of NLV growth on ability of City to meet its own needs; consider interlocal agreement for policies on extensions of North Las Vegas sewage lines into City areas, or areas to be annexed into the City.	
B2(B2.1-2)	Review, determine if service area boundary is necessary for growth management.	PW, CP CM	1993 - 94	Report on need for location of service area boundary. Modify General land use Plan map, as necessary, to reflect any adopted service area boundary.	
C1(C1.1)	Investigate potential effects of reusing wastewater instead of returning it for flow credit to allow more diversions of Colorado River water for consumptive use.	PW, SNWA, CM	1993	Inventory, evaluation, recommendation for remote wastewater treatment plants to irrigate or resell for reuse to other developments or to public facilities located outside the existing City wastewater service system.	
C1(C1.2)	Investigate use of remote treatment plants for reuse of water in order to reduce consumption of potable water.	PW, CCSD	1993	Report documenting whether City should construct, operate remote treatment plants to provide reuse water.	
C2	Attempt to use allocations granted by existing primary permits in order to increase to the maximum the potential for return flow credits.	CP, CM, SNWA	Ongoing	Petitions by City, as necessary, to reduce permit allocations in order to assure maximum return flow credits to the Colorado River.	May lead to stronger regional and local conservation efforts for permit holders.

Endnotes

1. George Rainer, P.E., ed., Understanding Infrastructure, (New York Wiley 1990), p. xxiii.
2. "Master Sanitary Sewer Study: Comprehensive Review of Past Wastewater Collection Systems Master Plans", Engineering Planning Division, Department of Public Works, October, 1990, p. 1.
3. Ibid., p. 2.
4. Ibid., p. 3.
5. Ibid., p. 4.
6. Ibid., p. 6.
7. Ibid.
8. "Public Works 2000", February, 1991, Department of Public Works, p. 54.
9. City of Las Vegas, Nevada "Capital Improvements Plan, 1990-1995" adopted 1990, p. 8.
10. Ibid., p. 8.

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- "Capital Improvements Plan." City of Las Vegas, p. 8, 1990.
- "Master Sanitary Sewer Study: Comprehensive Review of Past Wastewater Collection Systems Master Plans." City of Las Vegas, Department of Public Works, p. 1, 1990.
- "Public Works 2000". City of Las Vegas. Department of Public Works, p. 54, 1991.
- Rainer, George, P.E. (ed.) Understanding Infrastructure. New York: Wiley Interscience Books, 1990.

4B. Water Distribution System

4B.1 Background

Water Supplies and Uses

Water in Las Vegas comes from two sources: Surface water and groundwater. Rainfall in the Las Vegas valley is approximately four inches annually. About 30,000 acre feet per year (AFY) is naturally recharged into the groundwater system but that is the result of snow, not the annual rainfall. The major uses of water are for irrigation, municipal and industrial applications.¹ In 1989, in the Las Vegas Valley Water District service area, residential uses consumed 64% of the water.

The City of Las Vegas is supplied water by the Las Vegas Valley Water District. Also, small areas of Las Vegas are served by North Las Vegas. The City of Las Vegas does not operate its own municipal water supply, which reduces its direct control over the timing or distribution of water.

The District is a quasi-municipal corporation which was created in 1947 by a special legislative act (Chapter 167, Nevada Revised Statutes). Per statute, the District administers and operates the Southern Nevada Water System (SNWS). The SNWS treats and delivers water from the Colorado River for distribution by the District to the City and parts of the County. The maximum allocation currently available to the users of the SNWS is 299,000 acre feet per year (AFY). SNWS users are the following: Boulder City, Henderson, Las Vegas Valley Water District, Nellis Air Force Base and North Las Vegas. (Map 2)

The goals of the District are to provide and distribute water from Lake Mead and to properly manage and conserve water. These goals are to be accomplished in a cooperative manner with

other entities.

In achieving these goals, the District has two roles. The first role is to operate and maintain the SNWS for all system users. The Southern Nevada Water System consists of the Alfred Meritt Smith Treatment Plant and the Robert B. Griffith Water Project. The Project includes the water pumping and distribution system. The second role is that the District operates an array of facilities to provide service to Las Vegas and unincorporated Clark County. Map 2 shows the location of existing and proposed facilities.

Sources of Water

The Las Vegas Valley Water District is allocated water from two sources. The first source, groundwater, is allocated at 39,725 AFY. The second, surface water from the Colorado River, is allocated to the State of Nevada by the U.S. Supreme Court decree in *Arizona v. California* 376 v. 340 (1964). This allocation is in the amount of 300,000 AFY for consumptive use. The first of the two sources of water to be reviewed is groundwater.

Groundwater

Since 1866, Nevada has adhered to the doctrine of prior appropriation.³ That doctrine states that the first appropriator of water (surface or groundwater) is allowed to satisfy its entire right before subsequent (junior) rights are satisfied. In 1939, a law was enacted by the Nevada State Legislature, giving control of the allocation of groundwater to the State Engineer. The statutes required that all prospective users of groundwater (except single family homes served by an individual well) obtain a permit from the State Engineer prior to placing the groundwater to a beneficial use. Permits cannot be granted if:

1. The area or groundwater basin is fully appropriated.
2. The project is not in the public interest.

3. Granting a permit for a well would affect existing rights.
4. The application, combined with all other applications, exceeds the amount that can be safely removed without causing an adverse effect on the groundwater system.

Groundwater can be taken only in volumes which can be safely withdrawn. This concept is known as perennial and safe yield. As such, it does not allow pumping more groundwater than is naturally replenished (known as mining). Through 1970, most water used in the District came from groundwater common only with some water coming from the Colorado River from the Basic Management, Inc. (BMI) system through 1971. The amount of groundwater withdrawal peaked in 1968/69 at about 90,000 AFY. Since that time, withdrawal has steadily declined as a means of meeting water demand. The State Engineer has set a withdrawal goal of 50,000 AFY.

The District is permitted to withdraw 39,725 AFY of groundwater. For the past few years, the District has not yet used all of this allocation for two reasons. One reason is the decline in the capacity of existing wells. Second, the District operates these wells primarily to meet summer peaks. New wells under construction and a well rehabilitation program for existing wells will allow the District to utilize the full allotment in summer peak periods. Indeed, it is believed that the first major water shortage will be a peaking problem during the summer of 1995.⁴

The other use of groundwater basins is to recharge them artificially.⁵ The District and North Las Vegas presently recharge the aquifer in the valley with Colorado River water. This process is known as banking, and occurs during winter months when demand is low. The banked water is then withdrawn as needed to offset peak shortages. Because of the continued, grow-

ing demand for Colorado River water, however, this appears to be a short-term solution to meeting overall water needs in the City. At some point, river water will be in demand year-round with little remaining for artificial recharge.

Surface Water

Nevada, as one of the lower Colorado River Basin states, has been apportioned 300,000 AFY of the Colorado River for its surface water supply to Southern Nevada. Two other states share the remaining 7.2 million AFY. California is apportioned 4.4 million AFY; Arizona is apportioned 2.8 million AFY. Allocation of the Colorado River water is controlled by the Colorado River Commission. The water is delivered to the Water District service area in accordance with the terms of the Robert B. Griffith Water System contract.

The above mentioned apportionments are for "consumptive use". This, and two other terms require further explanation: Consumptive use, return flow credits and diversions. "Consumptive use" is the amount that has been withdrawn and not returned to the river, i.e., "consumed". "Return flow" is the amount returned to the river via the Las Vegas Wash after it has been used and treated. Diversion is the total amount that can be taken or "diverted" from the river. They are related in the following manner:

Diversion - return = consumptive use

Based on the 1928 Boulder Canyon Project Act, and later, the 1964 Arizona v. California Supreme Court Decree, Nevada is allocated a maximum of 300,000 AFY consumptive use. If a portion of the river is returned to the river as return flow credit, Nevada can actually divert more than 300,000 AFY as long as the net result is a maximum of 300,000 consumptive use. If the entire 300,000 AFY is consumptively used, return flow credits are projected to be as high as 164,000 AFY. Nevada,

then could divert 464,000 AFY. For example: 464,000 AFY diversion - 164,000 AFY return flow credit = 300,000 AFY consumptive use.

The amounts covered by the primary and secondary permits are not considered as consumed just because they have been issued permits. Their consumption status is shown on Table 2, indicating actual consumption. The primary and general permits show what is allocated to the permittee. The 'secondary' column shows what is available from the primary permittee to associated users. The balance (the permitted amount less that actually used) actually goes to the River. In this way, return flow credits, regardless of permit allocations are calculated to the maximum actual amount. However, it is apparent that there is the potential to modify or cancel these permits in order to assure the maximum amount of water is returned to the wash. Initial overallocation as well as future permitting should be examined closely in light of future supply needs.

In 1989, because of an anticipated shortage of water, the District filed 146 applications for ground and surface water rights across the southwestern United States. This area comprises portions of Lincoln, Nye and White Pine Counties. Securing this added water requires a process which will include public hearings conducted by the State Engineer, detailed environmental impact statements, design, bonding and construction. All told, a process that could take until 2020.⁶ If all applications are approved, and the requests are granted, southern Nevada could gain approximately 256,000 AFY. At the present consumption rate established by the District of .84 AFY per single family unit, this is enough to supply 304,760 households, or approximately 762,000 additional people (based on 2.5 persons per household).

The above applications for water were followed in early 1991 by the cessation

and, in some cases, revocation of "will serve" letters to developments throughout the District service area. The "will serve" letters (written commitments by the District to provide the water required by a development) provided *carte blanche* access to a finite supply of Colorado River water.

Because of the crisis created by the cessation of "will serve" letters, a need arose to more comprehensively manage the surface water in southern Nevada. This response took the form of the creation of a new entity known as the Southern Nevada Water Authority. The members of the Authority included the Las Vegas Valley Water District, North Las Vegas, Henderson, Las Vegas, Boulder City, Clark County Sanitation District and the Big Bend Water District (Laughlin). While the City of Las Vegas is not a water purveyor, it does treat sewage. That treated sewage is returned to the Colorado return flow credit for future use. The City treats and discharges its sewage and that of all of North Las Vegas. NLV waste is also treated by Clark County Sanitation District.

The purpose of the Authority was to create a regional entity acceptable to the Secretary of the Interior and the Colorado River Commission to contract for the remaining unallocated portion of Nevada's Colorado River water. Other reasons for the creation of the Authority are to:

- Address water resource management and water conservation on a regional basis, and plan, manage and develop additional supplies of water for southern Nevada.
- Manage all water supplies through an approved "water budget" which balances the use of potable water, sewer return flows to the Colorado River and the reuse of sewer effluent.
- Address shortages and the sharing of the effect of that shortage among the purveyors.

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