

IN THE MATTER OF APPLICATIONS 36589 )  
AND 36590 TO CHANGE THE POINT OF )  
DIVERSION, MANNER AND PLACE OF USE )  
OF WATER HERETOFORE APPROPRIATED )  
UNDER PERMITS 26557 AND 26558 IN )  
SPANISH SPRINGS VALLEY, WASHOE )  
COUNTY, NEVADA )

R U L I N G

85

FINDINGS

I

Permits 26557 and 26558 were issued on September 19, 1972, each in the amount of 3.0 c.f.s., not to exceed 4.0 acre-feet per acre per annum, for the supplemental irrigation of 510 acres located within Section 7, T.20N., R.21E., M.D.B. & M. The proposed point of diversion under Permit 26557 is located within the SE1/4 SE1/4 and the proposed point of diversion under Permit 26558 is located within Lot 2 both in said Section 7. The permits were issued in the name of James C. Sweger, and currently remain of record in that name, although the record under both files indicates that the Permittee is deceased and his estate remains unsettled.

Proof of Completion of Work as required under NRS 533.390 was timely filed under Permit 26557 on May 19, 1978, stating that the well had been drilled to a total depth of 322 feet, cased and equipped with a submersible pump, and that said work was completed prior to May 18, 1979. Proof of Completion of Work was timely filed under 26558 on April 28, 1978, stating that the well had been drilled to a total depth of 350 feet, cased and equipped with a submersible pump, and that said work had been completed prior to April 28, 1979.

The original permitted deadline under both Permit 26557 and 26558 for the filing of Proof of Beneficial Use was April 19, 1977. Based primarily upon delays caused by settlement of the estate of James C. Sweger, several Applications for Extension of Time were timely submitted to the State Engineer under both permits, and the deadline was extended ultimately to June 19, 1979.

II

Applications 36589 and 36590 were filed on January 31, 1979, in the name of James C. Sweger to change the point of diversion, manner and place of use of the entire right allowed under 26557 and 26558 respectively. The proposed point of diversion under Application 36589 is at a different location than Permit 26557 (approximately 300 feet north) but within the same 40-acre legal subdivision as Permit 26557. The proposed point of diversion under Application 36590 is within Lot 4 of Section 7, which places it approximately 3500 feet south of the point of diversion under Permit 26558. The proposed place of use under both applications is within the entirety of Section 7, T.20N., R.21E., M.D.B. & M and the SE1/4 Section 12, T.20N., R.20E., M.D.B. & M. The proposed manner of use under Applications 36589 and 36590 is quasi-municipal and domestic. Item 15 of both applications indicates that the proposed use is service to "300-400 individual one-acre residences and a green area."

Notice of application was published under Applications 36589 and 36590 in The Reno Evening Gazette on March 28, April 4, 11, 18 and 25, 1979, in accordance with NRS 533.360. The statutory period for protest ended on May 25, 1979.

### III

Timely protests to the granting of Applications 36589 and 36590 were filed on April 9, 1979 in the name of L. David Kiley, Trustee for Marian M. Stead Trust and L. David Kiley as a separate property owner. Said protests seek denial of the applications on the following grounds:

"The granting of this application would be detrimental to the existing certified water that is now in use. The valley has more certified and permitted water rights than the annual yield will support. Apparently no use has been made of the application since 1972, and this application made in February, 1972 should be allowed to expire".

A second protest was timely filed under both applications on April 17, 1979, in the name of Richard T. Donovan. Said protests seek the denial of both applications on the following grounds:

"This proposed use will impair the value of my existing certified rights, the Spanish Springs Basin is grossly over-appropriated at this time. Application claims that, 'water was used for irrigation and domestic purposes from Jan. 1 to Dec. 31.' This is a false statement. A field visit will show no use that any water has been put to. The original #26557 has had no use put to it since being taken out in February, 1972"

### IV

A written answer to the protests of Kiley and Donovan was submitted to the State Engineer on May 31, 1979, by M. Douglas Miller, consultant and agent for the Estate of James C. Sweger. Said answer admits, as stated by the Donovan protest, that beneficial use has not been made for irrigation purposes due to the nature of the soil. Said answer further states that the applicant recognizes that agricultural use consumes a significantly greater amount of water than does a quasi-municipal use.

### V

The valid water rights currently of record in the name of Marian M. Stead and L. David Kiley within the Spanish Springs Valley hydrographic ground water basin are located in Section 10, T.20N., R.20E., M.D.B. & M. The proposed point of diversion under Sweger Application 36589 is located approximately 2-3/4 miles east of the nearest Stead-Kiley ground water permit point of diversion, and the proposed point of diversion under Sweger Application 36590 is located approximately 2-1/4 miles east of the nearest Stead-Kiley ground water permit point of diversion. The change in points of diversion proposed under Applications 36589 and 36590 will not move the Sweger wells closer to the Stead-Kiley wells.

VI

There are two valid water rights currently of record in the name of Richard T. Donovan within the Spanish Springs Valley hydrographic ground water basin. These two permits are on separate wells located within the SW1/4 NE1/4 Section 24 and SE1/4 NE1/4 Section 23, T.21N., R.20E., M.D.B. & M. Both wells are located approximately 4-1/2 miles north of the points of diversion under Sweger Applications 36589 and 36590. The proposed change in points of diversion will increase the distance between the Sweger wells and the Donovan wells by approximately 3500 feet under Application 36590 and reduce the distance by approximately 300 feet under Application 36589.

VII

There are no other existing water rights less than approximately 1/2 mile from the proposed points of diversion of Applications 36589 and 36590. The location of the proposed point of diversion under Application 36590 is further removed from the areas of potential concentrated ground water pumpage within Spanish Springs Valley than is the existing point of diversion under Permit 26558.

VIII

The normal allocation of water by the Division of Water Resources for quasi-municipal service to single family dwelling units in the area of Spanish Springs Valley is 1000 gallons per day per unit.

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties and the subject matter of this action in accordance with NRS 533.025 and NRS 533.030, subsection 1.

II

Applications 36589 and 36590 were properly filed, notice of application has been properly made, and the required period for formal protest has expired, all in accordance with provisions of statute.

III

Applications 36589 and 36590 were filed for the purpose of changing the point of diversion, manner and place of use of water heretofore appropriated under Permits 26557 and 26558. The granting of a permit under said applications to change would therefore not constitute an additional appropriation of water from the Spanish Springs Valley hydrographic basin.

IV

The total combined number of residential units proposed to be served under Applications 36589 and 36590 is four hundred (400). Therefore based upon a normal allocation of 1000 gallons per day per unit, an annual duty of 146.0 million gallons per annum, or 448.06 acre-feet per annum, would be allowed for quasi-municipal service to the proposed development.

V

Based upon an annual duty of 4.0 acre-feet per acre per annum, a total combined duty of 2040 acre-feet per annum was appropriated under Permits 26557 and 26558 for the irrigation of 510 acres.

VI

Since both Application 36589 and Application 36590 intend to change the total diversion rate of 3.0 c.f.s. allowed under Permits 26557 and 26558, the granting of said applications would abrogate in total all rights under the base permits, whereby irrigation rights would no longer exist.

VII

The granting of permits under Applications 36589 and 36590 would reduce the amount of water originally appropriated under Permits 26557 and 26558 from a total of 2040 acre-feet to a total duty of 448.06 acre-feet per annum, which is a total reduction of 1591.94 acre-feet per annum.

VIII

The locations of the proposed points of diversion under Applications 36589 and 36590 will not create an undue interference with other existing rights within the ground water basin, including those rights held by protestants Kiley and Donovan.

IX

There is no evidence that within the scope of the State Engineer's authority to consider the public interest or welfare that the proposed changes would be detrimental to the public welfare.

X

NRS 533.370 provides that the State Engineer shall approve all applications made in proper form where the proposed change does not tend to impair the value of existing rights or to be otherwise detrimental to the public welfare.

RULING

The protests to the granting of Applications 36589 and 36590 are herewith overruled on the grounds that the granting of a permit will not interfere with existing rights or be detrimental to the public welfare. Permits will be issued subject to the following conditions:

1. The total combined duty of water allowed under both permits is limited to 146.0 million gallons per annum for quasi-municipal service to no more than 400 single family residences.
2. A totalizing meter must be installed and maintained in the discharge line near both wells and accurate records must be kept of the water placed to beneficial use. The meters must be installed before any beneficial use is made of the water and before the Proof of Completion of Work is filed.
3. The permits will retain the priority of appropriation of Permits 26557 and 26558 and will be issued subject to all prior existing rights.
4. At least one (1) ground water monitor well is to be installed within the place of use at a location satisfactory to the State Engineer before any diversion of ground water from the production wells. The monitor well must be suitably cased, perforated, sealed and capped and must penetrate at least 75 feet below the water table.

Respectfully submitted,

*William J. Newman*

William J. Newman  
State Engineer

WJN/BAR/bc

Dated this 1st day  
of August, 1979.

EX-111-1111