

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

IN THE MATTER OF APPLICATION 54900 FILED)
TO CHANGE THE POINT OF DIVERSION AND)
PLACE OF USE HERETOFORE APPROPRIATED)
UNDER PERMIT 36525, CERTIFICATE 12456,)
OF THE WATER OF AN UNDERGROUND SOURCE IN)
THE SMITH VALLEY GROUND WATER BASIN,)
LYON COUNTY, NEVADA.)

RULING

3842

GENERAL

I.

Application 54900 was filed June 1, 1990, by Edgar S. and Mary V. Eckel to change the point of diversion and place of use of 0.088 c.f.s., a portion of water heretofore appropriated under Permit 36525, Certificate 12456. The proposed use is for irrigation and domestic purposes on 5 acres located within the N1/2 NE1/4 NW1/4 NW1/4 Section 31, T.12N., R.24E., M.D.B.&M. The existing place of use is described as the W1/2 NW1/4 NW1/4 NW1/4 Section 31. The proposed point of diversion is within the NW1/4 NW1/4 Section 31, and the existing point of diversion is within the NE1/4 NW1/4 Section 31 both in T.12N., R.24E. Edgar S. and Mary V. Eckel are the owners of record of the portion of Permit 36525, Certificate 12456, which is requested to be changed by Application 54900.¹

II.

Application 54900 was timely protested on October 30, 1990, by Glen H. Smith on the following grounds:

"The existing well have an effect on my wells. Also the existing point of Diversion does not produce enough water for the acreage. I believe the well is mining the water in the area. The water right has been transferred off of part of this property. The proposed wells are in a fault area where recharge is difficult."

¹ Public record of the State Engineer, Application 54900; Permit 36525, Certificate 12456.

The protestant made no request regarding denial or issuance or that an order be entered for such relief as the State Engineer deems just and proper.¹

FINDINGS OF FACT

I.

A public administrative hearing was held before the State Engineer on July 23, 1991, in the matter of protested Application 54900.²

II.

Application 54900 is an application to change water that has already been previously appropriated under Permit 36525 and subsequently placed to beneficial use and issued Certificate 12456 on June 13, 1990. The five acres in the name of Eckels under Permit 36525 is currently being irrigated in the W1/2 NW1/4 NW1/4, Section 31 and Application 54900 proposes to remove this five acres from irrigation and proposes to irrigate five acres in the N1/2 NE1/4 NW1/4 NW1/4, Section 31.³

III.

The State Engineer finds that the proposed point of diversion in Application 54900 is located approximately 700 feet north-

² State of Nevada Exhibit No. 1, Public Administrative Hearing before the State Engineer, July 23, 1991.

³ Testimony of Glen H. Smith Transcript page 7. Public administrative hearing before the State Engineer on July 23, 1991.

northwest from the existing point of diversion of Permit 36525, Certificate 12456.⁴

IV.

The State Engineer finds that the protestant has three permitted wells located approximately 4,500 feet west, 7,000 feet west and 5,600 feet southwest, respectively, from applicants' existing domestic well which is also the proposed point of diversion of Application 54900.⁵

The protestant contends that the production from his wells has decreased apparently from a decline in the water level in the area and approval of Application 54900 will cause additional harm to his wells.⁶

V.

Evidence was introduced that showed the static water level measurements in the area of the applicants' proposed point of diversion of Application 54900; the existing point of diversion

⁴ Public record of the State Engineer, Application 54900; Permit 36525, Certificate 12456; and Permit 36524, Certificate 12481.

⁵ Public record in the office of the State Engineer filed under Permit 16628, Certificate 5317; Permit 16629, Certificate 5318; Permit 25895, Certificate 8090; Permit 18368, Certificate 5689 and Application 54900.

⁶ Testimony of Glen H. Smith see Transcript, Page 17, public administrative hearing held before the State Engineer on July 23, 1991.

under Permit 36525 and the protestant's existing wells are uniformly declining over the past four years.⁷

VI.

All other static water level measurements within all of Smith Valley have shown a similar decline as to those within the area of the applicants' and protestant's wells.⁸

VII.

Permit 36525, Certificate 12456, was issued with a duty of 325.62 acre-feet annually for the irrigation of 145 acres of land, which is 2.245 acre-feet per acre. Permit 36524, Certificate 12481, was issued with a duty of 254.39 acre-feet annually for the same 145 acres as described under Permit 36525. The duty under Permit 36524 is 1.754 acre-feet per acre. Thus the duty under each permit is necessary to have a full duty of 4.0 acre-feet per acre as originally issued.⁴

VIII.

No application has been submitted to the State Engineer's office to change the point of diversion and place of use of water issued under Permit 36524, Certificate 12481, in the name of Edgar S. Eckel and Mary V. Eckel.⁴

⁷ State of Nevada Exhibit No. 7, See Transcript of Hearing held before the State Engineer on July 23, 1991.

⁸ Records in the office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁹

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:

- A. The proposed change of use conflicts with existing rights, or
- B. The proposed use threatens to prove detrimental to the public interest.¹⁰

III.

The State Engineer concludes that there will be no additional decline in water levels in the protestant's wells as a result of approving Application 54900 since no additional water would be pumped for this well than the amounts of water presently being pumped from the well under Permit 36525.

IV.

The State Engineer concludes that issuance of a permit for Application 54900 to change the point of diversion and place of use of a portion of Permit 36525, Certificate 12456, does not conflict with existing rights and would not prove to be detrimental to the public interest.

⁹ NRS 533 and NRS 534.

¹⁰ NRS 533.370, subsection 3.

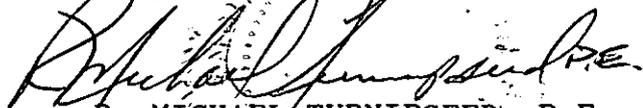
V.

The State Engineer concludes that no action can be taken on Application 54900 until an application to change the point of diversion and place of use of the appropriate portion of Permit 36524, Certificate 12481, is filed and ready for action in the office of the State Engineer. This action will result in the 5.0 acres under the proposed place of use under Application 54900 having a duty of 4.0 acre-feet per acre.

RULING

The protest to Application 54900 is hereby overruled. A permit for Application 54900 will be considered for issuance after an application to change the supplemental portion of Permit 36524, Certificate 12481, is made and that application has completed statutory publication and protest period set forth in NRS 533.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/CB/bk

Dated this 25TH day of
OCTOBER, 1991.