

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

IN THE MATTER OF APPLICATIONS 55840)
AND 55841 FILED TO CHANGE THE POINT)
OF DIVERSION AND PLACE OF USE OF THE)
WATER OF AN UNDERGROUND SOURCE IN)
THE SMITH VALLEY GROUND WATER BASIN,)
LYON COUNTY, NEVADA.)

RULING

*3854

GENERAL

I.

Application 55840 was filed February 14, 1991, by Josephine Casebolt to change the point of diversion and place of use of 1.32 cubic feet per second (cfs), 320 acre-feet annually, water heretofore appropriated under Permit 49446, Certificate 12095. The water is to be used for irrigation and domestic purposes on 80 acres of land within the E1/2 SE1/4 Section 24, T.11N., R.23E., M.D.B.&M. The proposed point of diversion is within the SE1/4 SE1/4 Section 24, T.11N., R.23E., M.D.B.&M. The existing point of diversion is within the NW1/4 NE1/4 Section 3, and the existing place of use is 80 acres within the N1/2 NE1/4 Section 3, T.11N., R.23E., M.D.B.&M.¹

The date of priority of Application 55840 and Permit 49446, Certificate 12095, is July 2, 1970, the same as that of the filing date of the base right, Permit 25690, Certificate 9215.¹

Application 55841 was filed February 14, 1991, by Josephine Casebolt to change the point of diversion and place of use of 0.29 cfs, 65.26 acre-feet annually, water heretofore appropriated under Permit 49447, Certificate 12096. The water is to be used for irrigation and domestic purposes on 80 acres of land within the E1/2 SE1/4 Section 24, T.11N., R.23E., M.D.B.&M. The proposed point of diversion is within the SE1/4 SE1/4 Section 24, T.11N., R.23E., M.D.B.&. The existing point of diversion is within the NW1/4 NE1/4 Section 3, and the existing place of use

¹ Public records of the State Engineer, under Applications 55840 and 55841, Permit 49446, Certificate 12095; Permit 49447, Certificate 12096; Permit 25690, Certificate 9215; and Permit 25543, Certificate 7557.

is 80 acres within the N1/2 NE1/4 Section 3, T.11N., R.23E., M.D.B.&M.¹

The date of priority of Application 55841 and Permit 49447, Certificate 12096, is April 16, 1970, the same as that of the filing date of the base right, Permit 25543, Certificate 7557.¹

II.

Applications 55840 and 55841 were timely protested by Vernon F. Bryan Inc., Annett Family Trust, and Milton E. Bacon dba Jubilee Ranch.

On May 6, 1991, Vernon F. Bryan Inc. protested both applications on the following grounds:

"Being the fifth year of a drought there is water righted acres that have to be unirrigated. By diverting water to new ground with the water table lowering every year would increase the shortage of water to everyone already affected."

Therefore the protestant requests that the application be denied.¹

On May 7, 1991, Annett Family Trust protested both applications on the following grounds:

"Before transferring water to new ground there are permits denied on water righted ground. Being in the drought situation with the water table dropping no new transfers should be allowed."

Therefore the protestant requests that the application be denied.¹

On May 24, 1991, Milton E. Bacon dba Jubilee Ranch protested both applications on the following grounds:

"Currently in this region, there is water righted farming acreage which is unirrigatable because of a lasting serious drought. No permit should be issued to transfer any water to new ground that would continue to drop the present water table."

Therefore the protestant requests that the application be denied.¹

FINDINGS OF FACTS

I.

Applications 55840 and 55841 are applications for permits to change water that has been previously appropriated from the Smith Valley Ground Water Basin under Permits 49446 and 49447, respectively, and subsequently placed to beneficial use and on March 10, 1989 issued Certificates 12095 and 12096, respectively. Permits 49446 and 49447 are supplemental to each other and supplemental to surface water flows of the Walker River on the same 80 acres in the N1/2 NE1/4 Section 3, T.11N., R.23E., M.D.B.&M. The land is currently being irrigated under both permits with a total combined duty not to exceed 320 acre-feet annually or not to exceed 4.0 acre-feet per acre per annum from any or all sources.

Applications 55840 and 55841 propose to remove these 80 acres from irrigation in Section 3 and propose to place 80 acres in the E1/2 SE1/4 Section 24 under irrigation if permits are issued for the applications.¹

II.

The State Engineer finds that each protestant has a water right permit near the existing point of diversion (NW1/4 NE1/4 Section 3, T.11N., R.23E.) but that the protestants do not have water rights near the proposed point of diversion (SE1/4 SE1/4 Section 24, T.11N., R.23E.)²

² Public records of the State Engineer.

<u>Owner of Record (Protestant)</u>	<u>Permit</u>	<u>Certificate</u>	<u>Point of Diversion</u>
Milton E. Bacon (Milton E. Bacon dba Jubilee Ranch	19600	6029	NW NW 11-11N-23E
Vernon F. Bryan and Ruth A. Bryan (Vernon F. Bryan, Inc.)	20491	6464	NW SW 3-11N-23E
Norman T. Annett (Annett Family Trust)	27317	10104	NW SW 11-11N-23E

III.

The State Engineer has annual water level measurements in Smith Valley that show water levels in the area of the existing point of diversion (NW1/4 NE1/4 Section 3) have dropped between 30 and 46 feet in the last four years.³

The water levels in the area of the proposed point of diversion (SE1/4 SE1/4 Section 24) have dropped 18 feet in the last four years.³

IV.

The State Engineer finds that the existing place of use of these ground water rights is also irrigated by Walker River Claim Number 32, which has a priority date of 1890.⁴

The proposed place of use of these ground water rights is also irrigated by Walker River Claim Number 143, portions of which have priority dates of 1862, 1863, 1868 and 1878.⁴

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁵

II.

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

- A. The proposed use conflicts with existing rights, or
- B. The proposed use threatens to prove detrimental to the public interest.⁶

³ Public records of the State Engineer, Smith Valley water level measurements.

⁴ Public record of the State Engineer and United States v. Walker River Irrigation District, et al., United States District Court for the District of Nevada, Equity No. C-125, as amended by the Order of the Honorable A.F. St. Sure, dated April 24, 1940, hereafter called Decree C-125.

⁵ NRS Chapter 533.025 and NRS 533.030, subsection 1.

⁶ NRS Chapter 533.370 subsection 3.

III.

The State Engineer concludes that to approve these applications would not conflict with the protestants' or any other water rights nor threaten to prove detrimental to the public interest.

IV.

The State Engineer concludes that because of earlier priority dates under Decree C-125 the proposed place of use under Application 55840 and 55841 would be entitled to more Walker River water and for longer periods of time during the irrigation season than the place of use under Permits 49446 and 49447. The State Engineer concludes that Applications 55840 and 55841 are filed to remain a supplemental source to Walker River water and thus, over the long term would result in less water being withdrawn from the groundwater basin.

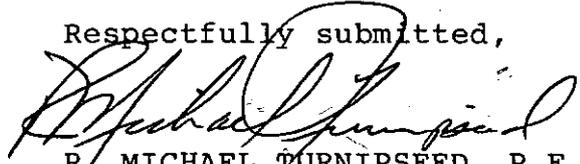
RULING

The protests to Applications 55840 and 55841 are hereby overruled on the grounds that the issuing of these permits would not interfere with existing rights nor threaten to be detrimental to the public interest. Permits for Applications 55840 and 55841 will be approved and issued subject to the following conditions:

1. Receipt of the statutory permit fees.
2. The well drilled under permits issued for the applications shall have a 2 inch opening to allow the measurement of water levels in the well.
3. A totalizing meter must be installed and maintained in the discharge of the well. Accurate measurements must be kept by month and sent quarterly to the State Engineer within 10 days from the end of each quarter (March 31, June 30, September 30, and December 31 of each year).

4. The existing well under Permits 49446 and 49447 shall be plugged as required by NAC 534.420 immediately upon completion of the new well.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/CB/pm

Dated this 10th day of
December, 1991.