

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

IN THE MATTER OF APPLICATIONS 63100, )  
63101, 63102 AND 63103 FILED TO CHANGE )  
THE POINT OF DIVERSION OF WATERS )  
PREVIOUSLY APPROPRIATED FROM AN )  
UNDERGROUND SOURCE WITHIN STONE )  
CABIN VALLEY GROUNDWATER BASIN (149), )  
NYE COUNTY, NEVADA. )

RULING

# 4580

GENERAL

I.

Application 63100 was filed on May 12, 1997, by Merle F. Carlson to change the point of diversion of 2.7 cubic feet per second (cfs) of the water previously appropriated under Permit 31543.<sup>1</sup> Application 63100 proposes to change the point of diversion from the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 26, T.1N., R.46E., M.D.B.&M. to a point of diversion described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 26. The proposed place of use is on 320 acres in the N $\frac{1}{2}$  of Section 26, T.1N., R.46E., M.D.B.&M.

II.

Application 63101 was filed on May 12, 1997, by Merle F. Carlson to change the point of diversion of 2.7 cfs of the water previously appropriated under Permit 31543.<sup>2</sup> Application 63101 proposes to change the point of diversion from the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 26, T.1N., R.46E., M.D.B.&M. to a point of diversion described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 26. The proposed place of use is on 320 acres in the N $\frac{1}{2}$  of Section 26, T.1N., R.46E., M.D.B.&M.

III.

Application 63102 was filed on May 12, 1997, by Eugene H. Miller to change the point of diversion of 2.7 cfs of the water

<sup>1</sup> File No. 63100, official records in the office of the State Engineer.

<sup>2</sup> File No. 63101, official records in the office of the State Engineer.

previously appropriated under Permit 31540.<sup>3</sup> Application 63102 proposes to change the point of diversion from the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 24, T.1N., R.46E., M.D.B.&M. to a point of diversion described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 24. The proposed place of use on 320 acres in the N $\frac{1}{2}$  of Section 24, T.1N., R.46E., M.D.B.&M.

IV.

Application 63103 was filed on May 12, 1997, by Eugene H. Miller to change the point of diversion of 2.7 cfs of the water previously appropriated under Permit 31540.<sup>4</sup> Application 63103 proposes to change the point of diversion from the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 24, T.1N., R.46E., M.D.B.&M. to a point of diversion described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 24. The proposed place of use in on 320 acres in the N $\frac{1}{2}$  of Section 24, T.1N., R.46E., M.D.B.&M.

V.

Applications 63100, 63101, 63102 and 63103 were timely protested by E. Wayne Hage on the following grounds:

Subject application is located in the Ralston grazing allotment owned by protestant. Protestant owns stock water wells in the vicinity of the proposed points of diversion. Any pumping of additional wells in the vicinity of existing wells could adversely effect the existing water rights owned by protestant. Grazing allotments were created in recognition of prior possessory rights for livestock grazing and are therefore not public land subject to disposal under the Desert Land Act, Cary [sic] Act or other land disposal law.

The allotment in which the subject application has been applied for is currently in a title action before the U.S.C.F.C. (USCC 91-1470L) in which the protestant is the plaintiff [sic] and the United States is the defendant. Granting of water rights to third parties while a court action is ongoing would be inappropriate.

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<sup>3</sup> File No. 63102, official records in the office of the State Engineer.

<sup>4</sup> File No. 63103, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

The State Engineer finds that on August 6, 1997, a letter in response to the protests was filed by Gregory M. Bilyeu, Thiel Engineering Consultants, on behalf of the applicants.

II.

Pursuant to Nevada Revised Statute § 533.365, it is within the State Engineer's discretion to determine whether an administrative hearing is necessary on a protested water right application. The State Engineer finds that a hearing is not necessary for a full understanding of the issues presented by the protests.

III.

Applications 63100, 63101, 63102 and 63103 are merely to change the point of diversion of water already appropriated under Permits 31540 and 31543. Nevada Revised Statute § 533.345(1) provides that an application can be filed to change the place of diversion, manner or place of use of water already appropriated. Water already appropriated, in reference to a change application, refers to water represented by a water right permit or certificate in good standing.<sup>5</sup> The State Engineer finds that Permits 31540 and 31543 are in good standing and available to be changed pursuant to Applications 63100, 63101, 63102 and 63103.

IV.

The protestant alleges that he owns stock-water wells in the vicinity of the proposed points of diversion and any pumping of additional wells in the vicinity of his existing wells could adversely effect the existing water rights owned by protestant. The records of the State Engineer indicate that the nearest well owned by the protestant to the proposed points of diversion is that well authorized under Permit 43016 in Section 9, T.1N., R.46E., M.D.B. & M. and is more than 17,000 feet away from the applicant's proposed closest well in Section 24 under Application 63103.

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<sup>5</sup> NRS § 533.324.

The point of diversion under Application 63103 is more than three miles from the point of diversion under any of protestant's water right permits and in essence is the same distance as the points of diversion permitted under Permits 31540 and 31543. Using the standard Theis Non-Equilibrium equation to estimate the drawdown of the water level from the pumping of the proposed well(s), several different scenarios were analyzed which reflect the maximum expected impacts on the nearest well of the protestant. Each calculation represented a variation in two sets of pumping scenarios. Both scenarios assumed the water was pumped from a single point being 17,000 feet away from the protestant's nearest well. The two scenarios provided the most conservative estimate of the maximum drawdown.

Scenario 1: Assumed pumping the maximum amount from the applicants two nearest wells being 1,280 acre feet.

Scenario 2: Assumed pumping the maximum amount from all four of the applicants wells being 2,560 acre feet.

Using conservative values of storativity (0.10) and transmissivity (4,000 SFD), the State Engineer finds that after pumping for a period of over 27 years the drawdown of the groundwater level at a distance of 17,000 feet from the proposed point of diversion using the variation of two wells diverting 1,280 acre feet per year would be 3.5 feet of drawdown, and using the variation of four wells diverting 2,560 acre feet per year would be 7.0 feet of drawdown. The State Engineer further finds that the distance is great enough from the protestant's closest well that the chances of interference with the protestant's water rights is nil.

V.

The protestant alleges that grazing allotments were created in recognition of prior possessory rights for livestock grazing and are therefore not public land subject to disposal under the Desert Land Act, Carey Act or other land disposal law. The issue of whether or not land designated as having a grazing allotment can be

withdrawn via a Desert Land or Carey Act entry is not one that the State Engineer has the authority to adjudicate. The State Engineer finds that Desert Land entries for the proposed place of use under these applications has been issued to the applicants by the United States Bureau of Land Management sufficiently demonstrating the applicant's ability to go forward with putting the water to beneficial use.

VI.

The protestant also alleges that the allotment in which the subject application has been applied for is currently in a title action before the U.S.C.F.C. (USCC 91-1470L) in which the protestant is the plaintiff and the United States is the defendant, and that the granting of water rights to third parties while a court action is ongoing would be inappropriate. The State Engineer finds that the base water rights being changed have the exact same place of use as Applications 63100, 63101, 63102 and 63103; therefore, the issue of whether to grant water rights for use on these lands was already dealt with in granting of the underlying base permit and is not relevant to the determination to be made as to whether to grant these applications which merely change the points of diversion.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the subject matter of this action and determination.<sup>6</sup>

II.

The change applications seek merely to move the point of diversion of water rights already granted under Permits 31540 and 31543 for use within the same place of use identified under those permits. Nevada Revised Statute § 534.110 provides that it is a condition of each appropriation of ground water acquired under Chapter 534 that the right of the appropriator relates to a

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<sup>6</sup> NRS Chapters 533 and 534.

specific quantity of water and that the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion.<sup>7</sup> The State Engineer concludes that there will not be an unreasonable lowering of the static water level by the granting of change Applications 63100, 63101, 63102 and 63103 at either the appropriator's points of diversion or at the protestant's closest well; thus, there is no interference with the protestant's existing water rights.

III.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where<sup>8</sup>:

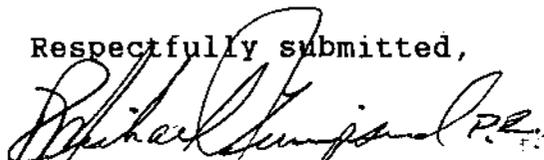
- a. the proposed use conflicts with existing rights; or
- b. the proposed use threatens to prove detrimental to the public interest.

The State Engineer concludes that to grant these change applications would not conflict with the protestant's existing water rights nor threaten to prove detrimental to the public interest.

RULING

The protests to Applications 63100, 63101, 63012 and 63103 are overruled and Applications 63100, 63101, 63102 and 63103 are hereby granted subject to existing rights and payment of the statutory fees.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJT/ab

Dated this 13th day of  
November, 1997.

<sup>7</sup> NRS § 534.110

<sup>8</sup> NRS § 533.370(3).