

IN THE MATTER OF APPLICATIONS 29766,)
29767 AND 29768 TO CHANGE PERMITS)
26408, 26409 AND 26410 TO APPROPRIATE)
UNDERGROUND WATER IN THE WINNEMUCCA)
SEGMENT, HUMBOLDT COUNTY, NEVADA)

R U L I N G

70

Application 29766 to change Permit 26408 was filed on November 14, 1975 by Donald and Wallis McGhie. The point of diversion is to be changed from the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 1, T.35N., R.37E., M.D.M. to the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T.35N., R.37E., M.D.M.

Applications 29767 and 29768 to change Permits 26409 and 26410 were filed on November 14, 1975 by Wallace and Doris Calder. The point of diversion under Permit 26409 is to be changed from the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T.35N., R.37E., M.D.M. to the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 11 by Application 29767. The point of diversion under Permit 26410 is to be changed from the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 11 to the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 11 by Application 29768.

Each of the three permits is to divert 6.0 c.f.s. of underground water and each of the three applications proposes to change 6.0 c.f.s.

The place of use under the three existing permits is 1200 acres in portions of Sections 1 and 11 and the N $\frac{1}{2}$ N $\frac{1}{2}$ Section 14, T.35N., R.37E., M.D.M. The proposed place of use under the three applications is 1200 acres in portions of Sections 1 and 11 and the N $\frac{1}{2}$ N $\frac{1}{2}$ Section 14, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 2, NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 12, T.35N., R.37E., M.D.M.

Applications 29766, 29767 and 29768 were protested on February 19, 1976 by G. L. Rowland who prayed that the applications be denied on the following grounds:

- "1. Time period for completion of the works (well, pump, motor and power hookup) was February 3, 1976. That by reason of the failure of applicant to complete the said works within the permitted time period, applicants' permit rights have been totally extinguished.
2. Applicant has failed to proceed in good faith and with reasonable diligence to perfect the appropriation of water under Permit 26408.

That permit allowed commencement of construction July 3, 1973. That applicant ever since July 3, 1973, has failed to proceed in good faith and with reasonable diligence to construct works as required by the provisions of his permit.

3. Protestant has valid and existing water rights pursuant to Permits Nos. 28242, 28245 and 29000 giving to Protestant water rights from the same ground water basin, which rights would be adversely affected by the granting to the applicant of the said application.
4. As a further and separate grounds of protest, work was never commenced in a manner required and completed under rules, regulations and law for the filing of a proof of commencement of work.
5. That the ground water basin from which applicant requests to withdraw water and from which Protestant withdraws water has been designated as a groundwater basin coming within the provision of Chapter 534 NRS (Conservation and Distribution of Water). That such designation is for the purpose of preventing the waste of underground waters. That to allow applicant's application is in direct contravention of the intent, provisions and scope of such water basin designation. That the application herein is solely for the purpose of perpetuating a permit that either has or would otherwise expire.
6. That there appears to be insufficient underground water available to allow the granting of applicants' request.
7. That the amount of underground water requested by applicant would have an adverse effect on the water rights of Protestant and other water rights in the designated ground water basin.

8. That the uses for which underground water is requested by applicant may be for purposes other than as set forth by applicant, and that the State Engineer's office should investigate and make a finding as to the correctness of the application on file herein.
9. That the State Engineer's office should investigate and make a finding that applicants are and will continue to be the owners of the real property from which water is sought to be withdrawn."

After investigation of the applications and the grounds of the protests the State Engineer has found that the applicants have proceeded in good faith and with reasonable diligence to develop the appropriations of water under Permits 26408, 26409 and 26410. The affidavits filed to show Proof of Commencement of Work are supported in the field by evidence of this work at the points of diversion. The affidavits filed for extensions of time have shown good cause for the State Engineer to grant extensions of time for filing Proofs of Commencement and Completion of Work. Applications 29766, 29767 and 29768 to change Permits 26408, 26409 and 26410 became ready for action by the State Engineer on February 23, 1976. This is within the statutory 30 day grace period allowed for filing Proofs of Completion under Permits 26408, 26409 and 26410 which began on February 3, 1976. Since the February 23, 1976 ready for action date, the State Engineer has proceeded with diligence to investigate and act on the applications to change.

The State Engineer has further found that the protestant's water rights under Permits 28242, 28245 and 29000 will not be adversely affected by the granting of Applications 29766, 29767 and 29768. The applicants' water rights which they are seeking to change carry a senior priority to protestant's water rights. The average distance of the applicants' three proposed wells is approximately the same distance as the average distance of the applicants' three existing points of diversion from the protestant's wells. The amount of water to be diverted from each proposed well is to remain the same (6.0 c.f.s.) as the amount presently appropriated under each of the existing permits. The total

Ruling
Applications 29766, 29767 and 29768
Page 4

annual diversion for all proposed wells is to remain the same since the area of the proposed place of use is the same (1200 acres) as the area of the existing place of use. The protestant's well is pumping from 76 feet which is not an uneconomical level and the pumpage proposed by the applicants would have to lower the water table a substantial amount before the lift at the protestant's well would be considered uneconomical or unreasonable.

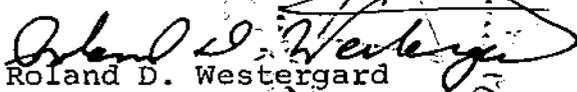
The applicants are not attempting to appropriate additional underground water from the designated Winnemucca Segment ground water reservoir but are applying to change the points of diversion and place of use of existing appropriations from this ground water reservoir.

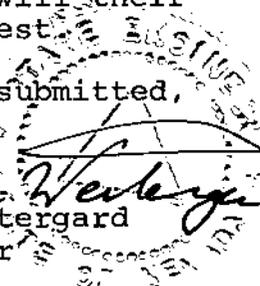
The State Engineer has not found substantial evidence that the applicants do not intend to proceed to develop underground water as stated in their applications or that the applications are incorrect. If at a later date a change in the manner of use is contemplated, the statutory procedures to effect a change must be followed.

RULING:

The protests to the granting of Applications 29766, 29767 and 29768 to change Permits 26408, 26409 and 26410 are hereby overruled on the grounds that the underground water from the Winnemucca Segment to serve these applications has been appropriated under Permits 26408, 26409 and 26410. Further, Applications 29766, 29767 and 29768 will not adversely affect existing water rights nor will their granting be detrimental to the public interest.

Respectfully submitted,


Roland D. Westergard
State Engineer



RDW/JC/lk

Dated this 24th day
of March, 1976.