

IN THE MATTER OF APPLICATIONS)
29586, 29587, 29925, 29926,)
29927, 29928 TO APPROPRIATE)
WATER FROM UNDERGROUND SOURCES)
IN NYE COUNTY, NEVADA)

R U L I N G

GENERAL:

Applications 29586 and 29587 were filed on August 19, 1975, in the name of Richard L. and Margaret A. Carver, each to appropriate 3.25 c.f.s. of water for irrigation and domestic purposes. The point of diversion under Application 29586 is from an underground source located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, and the point of diversion under Application 29587 is an underground source located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20, both in T.11N., R.43E., M.D.B. &M. These applications are to supplement each other on 214.20 acres within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 20, portions NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29, all in T.11N., R.43E., M.D.B. &M.

A protest to the granting of both applications was filed on November 6, 1975, in the name of Wine Glass, Inc., by Ross E. de Lipkau, agent. The protest to the granting of Applications 29586 and 29587 which states basically that the underground water sought by these applications is actually tributary to Broad Creek and the various small seeps and springs which are the subject of Proofs of Appropriation 01522, 01594 and 02864 owned by the protestant and further that there is absolutely no unappropriated water at the source because all of the underground water sought by these applications is in fact water tributary to Broad Creek, which the protest describes as being fully appropriated by historic use.

Applications 29925, 29926, 29927 and 29928 were filed on January 16, 1976, in the name of Wine Glass Inc., each to appropriate 3.0 c.f.s. from underground sources, the points of diversion to be located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 19, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20, and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 19, respectively, all in T.11N., R.43E., M.D.B. &M. The water under all four applications is to be used for irrigation and domestic purposes on the same 638 acres located within portions of the E $\frac{1}{2}$ E $\frac{1}{2}$ Section 19, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20, T.11N., R.43E., M.D.B. &M.

Protests to the granting of Applications 29925, 29926, 29927 and 29928 were filed on June 21, 1976, in the name of Richard L. Carver on the grounds that: "It will effect (sic) the flow of the water supply of the proposed wells No. 29586 and 29587." This protest seeks denial of each of the applications.

Applications 29586 and 29587 became ready for action by the State Engineer's office on November 17, 1975, while Applications 29925, 29926, 29927 and 29928 became ready for action on June 21, 1976.

A field investigation into the matter of protested Applications 29586, 29587, 29925, 29926, 29927 and 29928 was conducted by members of the State Engineer's office on August 5, 1976. The investigation was attended by Richard L. and Margaret A. Carver, applicants under Applications 29586 and 29587, and by Carl V. Hass, Jr., representing Wine Glass, Inc., applicant under Applications 29925 through 29928 inclusive.

The Wineglass Ranch, located in Sec. 19 & 20, T.11N., R.43E., M.D.B. &M., is presently irrigated by two sources of water, those being Broad Creek and a series of springs which rise along a north-south line approximately along the center of the E $\frac{1}{2}$ E $\frac{1}{2}$ of Sec. 19 (Ref. Carvers Quadrangle, 7.5 minute series). There are no established water rights of record on these springs. However, Proof of Appropriation No. 02864 on Broad Creek states that "the source includes 20 small seeps or springs within the E $\frac{1}{2}$ E $\frac{1}{2}$ Sec. 19, T.11N., R.43E., M.D.B. &M.", indicating that these springs are considered to be tributary to Broad Creek under the proof. Broad Creek and its tributaries are presently under an adjudication proceeding, with the petition for adjudication having been granted by the State Engineer on September 3, 1976. Until such time as the adjudication is completed, the limit and extent of vested rights on Broad Creek and its tributaries cannot be determined, including whether or not there are vested rights in existence below (downstream of) the Wineglass Ranch.

The series of springs and seeps on the Wineglass Ranch originate along a line running approximately north and south, as previously described, and evidence in the field and available to the State Engineer indicates that these springs and seeps define a fault system which runs for a distance of approximately three miles from the Wineglass Ranch through Darroughs Hot Springs to Bergs Ranch (Ref. Carvers Quadrangle, 7.5 minute series). The proposed point of diversion under Application 29928 is located immediately on the north-south line defined by the many springs and seeps. It is, therefore, the opinion of the State Engineer that the granting of a permit under Application 29928 would allow for the drilling of a well which would intercept the apparent fault system and that production from this well would tend to interfere with spring flow in this area. Although

the limit and extent of vested rights on these springs has not been determined, historical evidence indicates that this spring flow undoubtedly has valid vested rights and the granting of a permit under Application 29928 would tend to interfere with such rights.

Water Resources Bulletin No. 41, "Water Resources of Big Smoky Valley, Lander, Nye, and Esmeralda Counties, Nevada", contains a record of selected wells and testholes. Based upon data included within this record, the transmissivity of the aquifers in the area of the proposed wells is calculated to be 26,700 gpd/ft. Water Resources Bulletin No. 41 recommends (Table 26, pg. 64) a spacing for wells of 0.5 miles to prevent excessive interference between wells for such a transmissivity value.

Applications 29586, 29587, 29925, 29926, 29927 and 29928 represent six underground diversions within an area of approximately $\frac{1}{4}$ -square mile, which would create a considerable concentration of ground water pumpage. Based upon the Water Resources Bulletin No. 41 recommendation of 0.5-mile spacing, this proposed concentration of wells might also result in excessive interference between wells.

As previously noted, Applications 29586 and 29587 were filed by Richard L. and Margaret A. Carver on August 19, 1975, while Applications 29925, 29926, 29927 and 29928 were filed later in time by Wine Glass, Inc., on January 16, 1976. In accordance with the doctrine of prior appropriation, Applications 29586 and 29587 must first be considered for approval and Applications 29925, 29926, 29927 and 29928 must be considered with respect to their effect on the proposed wells under applications filed prior in time.

Applications 29586 and 29587 seek to appropriate water sufficient for the irrigation of a total of 214.2 acres, which will necessitate the withdrawal of 846.8 acre-feet of water per year, based upon a duty of 4.0 acre-feet per acre irrigated. Applications 29925, 29926, 29927 and 29928 seek to appropriate water sufficient for the irrigation of a total of 638 acres, which would require an annual withdrawal of 2552 acre-feet. It is the opinion of the State Engineer that there is sufficient ground water available to support the irrigation of the total of 852.2 acres.

Two permits in the amount of 3.0 c.f.s. would allow for the pumping of 1809.47 acre-feet within the normal 5-month growing season each year. Applications 29925 through 29928 are to supplement the irrigation of acreage by water

from Broad Creek and the Wineglass Ranch springs. The total yield from the Wineglass Ranch springs is approximately 1000 gpm, (Ref. Water Resources Bulletin No. 41), which would produce 671.9 acre-feet during that same 5-month period. The estimated average flow from Broad Creek is 1000 ac.-ft. (Ref. Water Resources Bulletin No. 41, Table 7), most of which would be available for use during the irrigation season. Two wells, Broad Creek and the Wineglass Ranch springs would, therefore, produce approximately 3481 acre-feet during the irrigation season, which exceeds the 2552 acre-feet necessary to provide 4.0 acre-feet per acre for irrigation of 638 acres. It is, therefore, the opinion of the State Engineer that the granting of two permits in the amount of 3.0 c.f.s. under Applications 29925 through 29928 would provide sufficient ground water for the 638 acres to be irrigated. To allow the greatest distance from the proposed wells under Applications 29586 and 29587 to prevent excessive interference between wells, and also to prevent interference with vested rights on the Wineglass Ranch springs, it is, therefore, the decision of the State Engineer to deny Applications 29925 and 29928 and to grant permits under Applications 29926 and 29927.

Applications 29586 and 29587 were protested on the grounds that the underground water is actually tributary to Broad Creek and the Wineglass Ranch seeps and springs, which the protests describe as being fully appropriated through vested rights. However, it is the opinion of the State Engineer that there would be no interference with the flow of Broad Creek by the proposed well under Application 29587, and that there will be no interference with the flow of the springs and seeps by the proposed wells under either application. The point of diversion under Application 29586 is located very near the channel of Broad Creek, but it is the opinion of the State Engineer that interference with the creek flow can be prevented by requiring that perforations in the well casing shall not start less than 100 feet from the surface unless the well log shows a satisfactory confining layer nearer the surface.

RULING

The protests to the granting of Applications 29586 and 29587 are hereby overruled, and permits will be granted under each application, subject to existing rights, upon receipt of the statutory permit fee. The permit under Application 29586 will be granted with the further requirement that perforations in the well casing shall not start

less than 100 feet from the surface unless the well log shows a satisfactory confining layer nearer the surface.

The protests to the granting of Applications 29925 and 29928 are hereby upheld, and the applications are hereby denied on the grounds that the granting of the applications would tend to adversely affect existing rights and be detrimental to the public interest.

The protests to the granting of Applications 29926 and 29927 are hereby overruled, and permits will be granted subject to existing rights upon receipt of the statutory permit fees.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW/BAR/dc

Dated this 7th

day of March, 1977.