

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 38309 TO)
APPROPRIATE THE PUBLIC WATERS OF)
JOHNSON SPRING AND CREEK,))
APPLICATIONS 44687, 44688, 47615, 47616,))
47617 TO APPROPRIATE THE WATERS OF AN))
UNDERGROUND SOURCE AND))
APPLICATIONS 49423 AND 49595 TO CHANGE))
THE POINT OF DIVERSION OF APPLICATIONS))
47615 AND 47616 RESPECTIVELY, ALL))
WITHIN GOSHUTE VALLEY, ELKO COUNTY,))
NEVADA.)

RULING

GENERAL

I.

Application 38309 was filed on June 11, 1979, by Unincorporated Town of West Wendover (hereinafter "Wendover") to appropriate 1.0 c.f.s. of water from Johnson Spring and Creek located within the SW1/4 SE1/4 Section 28, T.36N., R.66E., M.D.B.&M.

Applications 44687 was filed on October 26, 1981, by M. E. Clingman to appropriate 0.9 c.f.s. of water from the an underground source located within the SW1/4 SE1/4 Section 35, T.36N., R.67E., M.D.B.&M.

Application 44688 was filed on October 26, 1981, by M.E. Clingman to appropriate 0.9 c.f.s. of water from an underground source located within Lot 3, Section 1, T.35 N., R.67E., M.D.B.&M.

Application 47615 was filed on January 27, 1984, by Wendover to appropriate 2.0 c.f.s. of water from an underground source located within the SE1/4 NE1/4 (Lot 15) Section 6, T.35 N., R.67E., M.D.B.&M.

Application 47616 was filed on January 27, 1984, by Wendover to appropriate 2.0 c.f.s. of water from and underground source within the (NE1/4 NW1/4) Lot 10 Section 6, T.35 N., R.67E., M.D.B.&M.

Application 47617 was filed on January 27, 1984, by Wendover to appropriate 2.0 c.f.s. of water from an underground source within the NW1/4 NW1/4 (Lot 11) Section 6, T.35 N., R.67E., M.D.B.&M.

Application 49423 was filed on October 2, 1985, by Wendover to change the point of diversion of 2.0 c.f.s. of water previously applied for under Application 47615. The new point of diversion is within the NE1/4 NE1/4 Section 13, T.35 N., R.67E., M.D.B.&M.

Application 49595 was filed on December 18, 1985, by Wendover to change the point of diversion of 2.0 c.f.s. of water previously applied for under Application 47616. The new point of diversion is within the NE1/4 NE1/4 Section 18, T.35 N., R.68E., M.D.B.&M.

II.

Application 38309 was timely protested by Robert J. Beaumont (hereinafter "Beaumont") on July 30, 1980, for the following reasons and on the following grounds, to wit:

Robert J. Beaumont is the present owner of the Big Springs Ranch & water rights appurtenant thereto including Permits Nos. 2210 (Certificate No. 440), 18310 (Certificate No. 5831) & 28587 & 29409. (See also Judgment in Federal District Court, Action No. CIV. R-74-147 BRT, dated May 28, 1975 & on filed in the State Engineer's office). All of the aforesaid water rights relate to the waters of Johnson Spring & Creek. The Protestant has utilized for beneficial purposes all of the waters of Johnson Spring & Creek pursuant to said rights. Thus there is no water available for appropriation from Johnson Spring & Creek.

Protestant Beaumont requests Application 38309 be denied.

Applications 44687 and 44688 were timely protested by David Eddy on June 9, 1982, for the following reasons and on the following grounds, to wit:

1. The subject applications propose to appropriate an additional 1.8 cfs of water over and above an existing collectively permitted flow of 6.0 cfs grant under Permits 41543, 41544 & 41545. These permits were issued for quasi-municipal purposes which can be applied towards commercial consumption.
2. The permitted and certificated water right demands are rapidly approaching the estimated perennial yield of

7,700 acre feet/year within the Goshute Valley Hydrological Basin. Great care should be taken to protect the existing surface water rights that will be effected by large draft underground pumpage. (Refer to ruling dated May 20, 1981).

3. It is essential that underground water rights are not issued at the expense of surface water springs. Priority must be maintained even between surface and underground sources in order to protect existing water rights. The springs at Big Springs Ranch are fundamental to Flying "S" Land and Cattle Co's. ranching operation and a reduction of spring flow would be extremely detrimental.

Therefore, with M.E. Clingman already in possession of 6.0 cfs of permitted underground water, the lack of evidence that underground pumping demands are/are not effecting surface spring flows and the value of the springs at Big Springs Ranch to Flying "S" Land and Cattle Co's. ranching operation, I am requesting that the subject applications be denied.

Applications 44687 and 44688 were timely protested on June 14, 1982, by George R. E. Boucher on behalf of the Elko County Board of County Commissioners, (hereinafter "Elko County") for the following reasons and on the following grounds, to wit:

Application number(s) 44687 and 44688 (are) in the near proximity of Permits No. 29433 and 31192 that are commonly known as Silver Zone Wells No. 1 and 2. Said wells serve as a municipal water source for the towns of West Wendover, Nevada and Wendover, Utah. Protestant believes the above-noted application(s) will have a deleterious affect on the wells under Permits No. 29433 and 31192.

Protestant Elko County requests Applications 44687 and 44688 be denied.

Applications 47615, 47616 and 47617 were timely protested on May 11, 1984, by Toano Development Corporation, and on May 11, 1984, by Ford's, Inc., and on May 14, 1984, by Reed B. Robison, all for the following reasons and on the following grounds, to wit:

To grant (these) application(s) which (propose) to utilize sizeable drafts of underground water sources, would create an over appropriated ground water system and seriously endanger existing water rights. (We), as private landowners, feel we should have a right to a portion of water from the Goshute Valley.

The aforementioned Protestants request Applications 47615, 47616 and 47617 be denied.

Applications 47615, 47616 and 47617 were timely protested on May 22, 1984, by Richard W. Roth for the following reasons and on the following grounds, to wit:

The Unincorporated Town of West Wendover to date has permits to draft 3,612.5 acre feet per year from the Goshute Valley Hydrological Basin. This is 47% of the adjusted perennial yield for the basin. This applications is one of five additional applications that have been filed to draft an additional 7,225 acre feet per year from the basin. These new applications would account for 94% of the adjusted perennial yield of the basin. Thus, Wendover proposes applications to draft 144% of the adjusted perennial yield of the valley. This would have an adverse affect upon the existing water rights in the basin.

These requests for additional water by West Wendover are both speculative and unreasonable. The present duty allotted Wendover from the Goshute Valley is enough to supply a city of 16,125 persons at an average daily per capita use of 200 gallons. This about the average per capita use of five other metered Nevada communities. Wendover, utah also has a supply of water from near Pilot Peak that will supply an additional population. The projected population of the

combined Wendover communities by the year 2,000 is 20,000 persons. The combined duty of the present permits to the two Wendover communities should be adequate to handle this projected population if the water systems were adequately repaired and maintained, and reasonable conservation practices were employed. Population growth to 20,000 is a matter of speculation, and it does not seem consistent with the intent of Nevada Water Law to reserve water on speculation to the degree that these requests attempt.

Flying 'S' Land & Cattle Company thus requests that the requests for additional duty by the applications be denied. Sufficient permitted duty currently exists to supply the needs of the projected population in the year 2,000.

FINDINGS OF FACT

I.

After all of the subject parties had been duly notified as required under NRS 533.365(3), a hearing was held on June 16, 1988, for the filing of evidence and testimony deemed necessary by the State Engineer for a full understanding of the above-referenced applications and protests. A significant amount of testimony and evidence was developed at the subject hearing as all parties were provided a full opportunity to present their respective positions. Post-hearing written briefs were submitted to the State Engineer by the parties that had standing in the proceedings. The State Engineer took administrative notice of certain matters more fully set forth in the transcript of the hearing.¹

II.

Water Resources Bulletin No. 12, "Contributions to the Hydrology of Eastern Nevada", (hereinafter "Bulletin 12") was prepared by the United States Geological Survey in cooperation with the office of the Nevada State Engineer. Bulletin 12 includes a report on the Goshute-Antelope Valley area of Elko County, based on field work

¹ See Exhibit 1, administrative hearing of June 16, 1988.

conducted in May and June, 1948, and describes generally the hydrology and geology of the subject basin. The discharge of Johnson Spring was estimated in Bulletin 12 at 3.3 c.f.s., and has been estimated to range as high as 4.5 c.f.s. in 1988.² Applicant Wendover has the right to appropriate the first 1.0 c.f.s. from Johnson Spring for municipal purposes. Appropriations to divert at least 25 c.f.s. of the remaining flows exist in the name of Protestant Goshute. Unrebutted testimony established the fact that Goshute beneficially uses the remaining flow of Johnson Spring for irrigation purposes and that the period of use is only during the growing season and not during the winter months.³ After consideration of the entire record of evidence, the State Engineer finds the existing rights of Goshute and Wendover to use the waters of Johnson Spring constitute full appropriation of the source.

III.

The Goshute Valley Groundwater Basin was designated by the State Engineer on April 30, 1984, as an area in need of additional administration as provided in NRS 534.030, et seq., and municipal, quasi-municipal and domestic uses of underground water were declared preferred uses within the northern part of Goshute Valley, pursuant to NRS 534.120(2).⁴

IV.

Applications 44687, 44688, 47615, 47616, 47617, 49423 and 49595 all propose to divert underground water and/or change the point of diversion of underground water under existing rights for various beneficial uses from the Goshute Valley (northern part) Groundwater Basin, Elko County, Nevada.

V.

Protestants Toano Development Corporation, Ford's, Inc. and Reed Robison did not appear at the hearing and their protests have been considered by the State Engineer

² See Bulletin 12, pp. 21-28 and Johnson Spring discharge records in the office of the State Engineer.

³ Transcript of hearing of June 16, 1988, pp. 70-74, (hereinafter "Tr. , (pages)"); Tr., pp. 84-88.

⁴ State Engineer's Order No. 842, (Exhibit 32).

on their own merit.⁵ Protestant Elko County offered no additional evidence in support of the protest to Applications 44687 and 44688, and Protestant Goshute withdrew the protests to Applications 44687 and 44688 since the subject applications represent a non-consumptive (geothermal) commercial use.⁶ Applications 44687 and 44688 propose only to extract heat from the underground water and do not constitute consumption of groundwater. The State Engineer finds no evidence that the proposed use under 44687 and 44688 will adversely effect existing rights.

VI.

Water Resources - Reconnaissance Series Report 56, "Water-Resources Appraisal of the Pilot Creek Valley Area, Elko and White Pine Counties, Nevada", (hereinafter "Report 56") was prepared by the United States Geological Survey in cooperation with the Nevada Department of Conservation and Natural Resources. Report 56 overlaps a portion (Antelope Valley) of the Bulletin 12 study area and utilized newer mapping techniques and scientific estimation factors. Both Bulletin 12 and Report 56 are reconnaissance level compilations of hydrologic data, from which preliminary estimates were made regarding the amount of underground water that may be available on a safe or perennial yield basis. The State Engineer has closely evaluated the estimates made in Bulletin 12 for two purposes.

1. To isolate Goshute Valley as separate and distinct from the Goshute-Antelope Valley area encompassed in the study, and
2. To utilize the newer estimation factors that were used in Report 56 so that an assessment of the now isolated Goshute Valley would be consistent with the accepted methods in Report 56.

The scientific estimation factors used in Report 56 on a hydrologic basin adjacent to Goshute Valley are likely more accurate and reflect many more years of experience than those used in Bulletin 12. In fact, the present method itself for estimating recharge to a

⁵ Tr., pp. 5-6; p.30.

⁶ Tr., pp. 26-30, Exhibit 4 and Exhibit 7.

groundwater basin from precipitation was first published in Bulletin 12 (1951), was used throughout the series of Reconnaissance Series Reports including Report 56 (1971) and is still used today by the U.S. Geological Survey. The recharge estimation factors however have evolved over the years.

Bulletin 12 estimated the annual recharge from precipitation to the Goshute-Antelope Valley groundwater basin at 10,400 acre-feet. Using the updated (Report 56) recharge estimation factors the groundwater recharge from precipitation is estimated at 15,800 acre-feet. From this value the estimated natural recharge value (3,200 acre-feet) computed in Report 56 for the (overlapping) Antelope Valley area is subtracted to yield an estimated 12,600 acre-feet annually that recharges the Goshute Valley groundwater basin.

A similar analysis for natural discharge from Goshute Valley produces a value of nearly 13,700 acre-feet. The State Engineer typically accepts an average value produced by the USGS estimates of natural recharge and discharge as the amount of underground water that may be available for appropriation on a perennial yield basis. This perennial yield is the amount of underground water of suitable chemical quality that is estimated to be available within a groundwater basin for withdrawal on a long-term average annual basis. The evidence supports the findings that the perennial yield for the Goshute Valley Basin is 13,000 acre-feet.⁷

VII.

Protestant Goshute claimed there is insufficient recharge in the area of Wendover's proposed and existing well field, but nowhere adequately defined the "area" or why it is the sole source of recharge to the well field.⁸ Protestant Goshute further claimed the pumpage from the applicants' wells will somehow lower the (basin-wide) water table and thereby diminish the flow of Johnson Spring, but failed to support this assertion with credible evidence in this record. The water table elevation in the vicinity of the applicants' wells is one hundred forty feet higher than the elevation of the Johnson

⁷ Nevada Division of Water Resources office memorandum prepared by Groundwater Section staff, dated January 23, 1989.

⁸ Tr., pp. 50-55, Exhibit "F".

Spring.⁹ Groundwater recharge occurring in the Pequop Range on the west side of Goshute Valley moves easterly to the lowest (water table) elevation in the central valley floor (Hardy Creek)¹⁰ area. Similarly, recharge occurring on the east side (Toano Range) moves westerly and down gradient toward the same low point in the groundwater basin. Based on the record of evidence the State Engineer finds there exists a groundwater divide in this central valley floor area, across which there is no flow. These facts together with the entire record developed in this matter, support the finding that the granting of Applications 47615, 47616 and 47617 will not interfere with existing rights of Protestant Goshute.

VIII.

Wendover's Applications 49423 and 49595 to change the points of diversion of Applications 47615 and 47616, if granted simultaneously with the granting of protested Applications 47615 and 47616, would move the proposed well locations to over eight miles away from Johnson Spring and would therefore not conflict with the existing rights of Protestant Goshute.

IX.

Existing permits and certificates to appropriate underground water from the Goshute Valley Designated Groundwater Basin total 10,600 acre feet annually. As set forth above in Finding VI. there is 13,000 acre feet available on a perennial yield basis and therefore there is unappropriated water in the proposed source of supply.

X.

Pursuant to the authority in NRS Chapter 534, the State Engineer finds it in the public interest to require Applicant Wendover to establish a groundwater monitoring network, that will document actual groundwater conditions and response to pumpage from the existing and proposed well field. Applicant Wendover has agreed in principal to this directive in this record.

⁹ See Preliminary Water Level Data for Goshute Valley compiled by the U.S. Geological Survey and available in the office of the State Engineer.

¹⁰ Tr., pp. 185-189.

CONCLUSIONS

I.

As provided under NRS 533.370, the State Engineer shall approve an application submitted in proper form which contemplates the application of water to beneficial use unless (NRS 533.370(3)):

1. There is no unappropriated water in the proposed source of supply,
2. The proposed use conflicts with existing rights, or
3. The proposed use threatens to prove detrimental to the public interest.

II.

NRS 534.110(4) provides, as an express condition of each appropriation of groundwater acquired pursuant to Chapters 533 and 534, that the right of the appropriator shall relate to a specific quantity of water and that such right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion.

III.

NRS 534.110(5) authorizes the State Engineer to issue permits in (designated) areas to applicants later in time, even when such later appropriations may cause the water level to be lowered at the point of diversion of the prior appropriator, so long as the rights of holders of existing appropriations can be satisfied under such express conditions. The proposed new appropriations under Applications 47615, 47616, and 47617 will not cause an unreasonable lowering of the static water table in the senior appropriators points of diversion such that the rights of the holders of the senior appropriations cannot be satisfied.

IV.

The issuance of the subject permits, with proper monitoring requirements through development stages, up to and including full scale operations will not tend to conflict with existing rights to the extent they cannot be satisfied.

V.

Protestant Goshute claimed there is insufficient recharge in the area of Wendover's proposed and existing well field, but nowhere adequately defined the "area" or why it is the sole source of recharge to the well field. Protestant Goshute further claimed the pumpage from the applicants' wells will somehow lower the (basin-wide) water table and thereby diminish the flow of Johnson Spring, but failed to support this assertion with credible evidence in this record. The water table elevation in the vicinity of the applicants' wells is one hundred forty feet higher than the elevation of the Johnson Spring. Groundwater recharge occurring in the Pequop Range on the west side of Goshute Valley moves easterly to the lowest (water table) elevation in the central valley floor (Hardy Creek) area. Similarly, recharge occurring on the east side (Toano Range) moves westerly and down gradient toward the same low point in the groundwater basin. Based on the record of evidence the State Engineer concludes there exists a groundwater divide in this central valley floor area, across which there is no flow. These facts together with the entire record developed in this matter further support the conclusion that the granting of Applications 47615, 47616 and 47617 will not interfere with existing rights of Protestant Goshute.

RULING

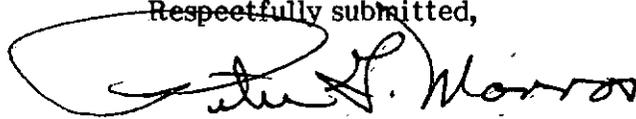
The protests to the granting of Application 38309 are herewith upheld and Application 38309 is denied on the grounds there is no unappropriated water in the proposed source of supply.

The protests to the granting of Applications 44687 and 44688 are herewith overruled on the grounds the proposed appropriations do not constitute a consumptive use of groundwater and will not conflict with existing rights. Permits will be issued upon receipt of statutory fees.

The protest to the granting of Applications 47615, 47616 and 47617 are herewith overruled on the grounds there is unappropriated water in the proposed source of supply and the proposed appropriations will not conflict with existing rights nor prove detrimental to the public interest. A monitoring plan for the Northern Goshute Valley

area must be submitted to the State Engineer for approval no later than 90 days from the date of this Ruling. Permits will be issued upon receipt of statutory fees. The State Engineer does not waive the right to regulate the withdrawals herein granted at any and all times.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", written over the typed name below.

PETER G. MORROS
State Engineer

PGM/TG/bk

Dated this 26th day of
January, 1989.