

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

IN THE MATTER OF APPLICATION 34949 FILED)
TO CHANGE THE PLACE OF USE OF THE WATERS)
OF THE SLOUGH, HERETOFORE APPROPRIATED)
UNDER PERMIT 29668 WITHIN THE CLOVER)
VALLEY GROUNDWATER BASIN, ELKO COUNTY,)
NEVADA.)

RULING

3932

GENERAL

I.

Application 34949 was filed on February 7, 1978 by Taylors, Ltd., to change the place of use of 5.0 c.f.s. of water from the Slough, previously appropriated under Permit 29668. The manner of use is for irrigation purposes within all of Section 15 and Section 22, T.35N., R.62E., M.D.B.&M. The existing place of use is within all of Section 16 and Section 22, T.35N., R.62E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4, Section 16, T.35N., R.62E., M.D.B.&M.¹

II.

Application 34949 was timely protested on July 27, 1978 by Rose Goodwin for the following reasons and on the following grounds, to wit:¹

- 1) The Notice does not specify the water source.
- 2) The Secretary in the State Engineer's office in Elko, Nevada informed the undersigned on July 27, 1978, that she was unable to locate any file in that office for this application or any copy of Permit #29668. Protestant therefore was unable to ascertain the effect of this application on her water rights and her protest time is about to expire. (No other personnel were available to discuss this application)
- 3) Irrigation is not conducted in the area January 1 to December 31 of each year.
- 4) The Protestant believes that application may exceed applicants water rights and may result in loss of water

¹ Public record in the office of the State Engineer.

in excess of that contemplated by permit #29668.

5) The Protestant believes granting the application will interfere with Protestants water rights.

III.

Application 34949 was timely protested on July 14, 1978 by Blair G. Johns for the following reasons and on the following grounds, to wit:¹

All of the water in the slough at Taylor's proposed point of diversion is used by Blair G. Johns under his Permits 2743, 25688, 29534 and under his vested water right 01387.

There is no unappropriated water in the slough.

Both respective protestants requested that the subject applications be denied.

FINDINGS OF FACT

I.

Application 34949 currently stands under the names of Ferris T. Brough, Marlene S. Brough, Wilde F. Brough and Sherry K. Brough in the records of the office of the State Engineer.¹

II.

Application 34949 was published in accordance with NRS 533.360 in the Elko Daily Free Press. The publication notice contained both a description of the source and a legal description of the proposed point of diversion.¹

III.

The point of diversion and the place of use under Application 34949 both lie within the boundaries of the Clover Valley Groundwater Basin which the State Engineer is in the process of making a determination of the limit and extent of the vested rights on the Slough and all streams within Clover Valley under a petition to adjudicate the system.¹

IV.

Numerous irrigation permits and certificates have been issued by the State Engineer for annual duties within the Clover Valley Groundwater Basin.²

² Public record in the office of the State Engineer.

V.

The proposed place of use under Application 34949 is all of Section 15 and Section 22, T.35N., R.62E., M.D.B.&M.¹

VI.

Application 34949 represents an application to change the place of use of Permit 29668. The existing place of use under Permit 29668 is within Section 16 and Section 22, T.35N., R.62E., M.D.B.&M.¹

VII.

The culture map submitted in support of the Proof of Beneficial Use filed under Permit 29666, depicts 228.13 acres under current irrigation within a portion of the proposed place of use under Application 34949, more specifically Section 15.³

VIII.

Additionally, the aforementioned culture map indicates no irrigation has occurred within that portion of Section 16 which is appurtenant to the place of use granted under Permit 29668.³

IX.

By letter dated November 13, 1992 from High Desert Engineering under the signature of Robert E. Morley, the State Engineer was informed that the intention of Application 34949 was to remove a portion of the place of use from Section 16 to Section 15 which would in effect correct the place of use granted under Permit 29668 to more accurately reflect the areas under actual irrigation as they currently exist on the ground.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.⁴

II.

The State Engineer is prohibited from granting application to change if said application:⁵

³ Public record in the office of the State Engineer under Permit 29666.

⁴ NRS Chapter 533.

⁵ NRS 533.370.

1. Conflicts with existing rights on the proposed source, or
2. The proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the intent of change Application 34949 is to correct the existing place of use granted under Permit 29668 to more accurately reflect actual irrigation practices as they exist on the ground.

IV.

Additionally, the change in the place of use does not constitute an additional appropriation upon the source beyond the duty granted under Permit 29668, hence the question of unappropriated water at the source is moot.

V.

The State Engineer can find no evidence that the new place of use sought in the subject application will adversely effect existing rights.

VI.

The irrigation of the 228.13 acres within Section 15, T.35N., R.62E., M.D.B.&M. is not detrimental to the public interest.

RULING

The protests to application 34949 are hereby overruled and Application 34949 is hereby approved upon payment of the statutory permit fees, subject to prior existing rights and further subject to the understanding that the issuance of the permit under this application is subject to final determination in the matter of the adjudication of the waters of Clover Valley.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 4th day of
February, 1993.