

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

IN THE MATTER OF PROTESTED APPLICATION )  
60616 FILED TO CHANGE POINT OF DIVERSION, )  
PLACE AND MANNER OF USE OF A PORTION, )  
HERETOFORE APPROPRIATED UNDER PERMIT )  
9849, CERTIFICATE 2784 OF THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE, WITHIN )  
THE CARSON VALLEY BASIN (105), DOUGLAS )  
COUNTY, NEVADA. )

RULING

# 4214

GENERAL

I.

Application 60616 was filed on October 27, 1994, by Genoa Lakes Venture to change the point of diversion, place and manner of use of a portion of water from an underground source heretofore appropriated under Permit 9849, Certificate 2784. The amount of water to be changed under Application 60616 is 1.032 cfs, but not to exceed 280 acre-feet annually. The water is to be supplemental to Sierra Canyon Creek, Permits 57327 and 57328. The proposed place of use is located within portions of the SW $\frac{1}{4}$ , W $\frac{1}{2}$  SE $\frac{1}{4}$ , and W $\frac{1}{2}$  NE $\frac{1}{4}$  Section 3, N $\frac{1}{2}$  NW $\frac{1}{4}$  and NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 10, T.13N., R.19E., M.D.B.&M., for quasi-municipal purposes. The existing point of diversion of Permit 9849, Certificate 2784 is located in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 3, T.13N., R.19E., M.D.B.&M. The new point of diversion is to be located in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 3, T.13N., R.19E., M.D.B.&M.<sup>1</sup>

II.

Permit 9849, Certificate 2784, was issued for irrigation of lands on which direct diversion decreed rights from Sierra Canyon Creek were appurtenant.<sup>2</sup> A portion of those direct diversion rights was changed by Permits 57327 and 57328.<sup>3</sup>

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<sup>1</sup> File No. 60616, official records in the Office of the State Engineer.

<sup>2</sup> File No. 9849, official records in the Office of the State Engineer.

<sup>3</sup> File No's. 57327 and 57328, official records in the Office of the State Engineer.

III.

Application 60616 was timely protested by Wallace E. Adams on the following grounds:

Protestant protests the granting of this application on the basis that the overall change of water use by the Applicant has adversely affected the historic method of irrigation upon the Adams Ranch. The Adams Ranch is adjacent to and north of, the Applicant's real property. It is expressly requested that the State Engineer conduct a field investigation to resolve the several water issues.

Therefore the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.<sup>1</sup>

IV.

As requested by the protestant, on May 26, 1995, staff engineers of the State Engineer's Office conducted a formal field investigation of Application 60616.<sup>4</sup> The attorney representing the Protestant argued three points:

1. That Application 60616 cannot be issued because the supplemental groundwater Permit 9849, Certificate 2784 should be forfeited for non-use.
2. That if the State Engineer issues Permit 60616 he would in effect be issuing a permanent water right because it is for 280 acre-feet annually and Genoa Lakes Venture has been allowed to use only 133.08 acre-feet from Permits 57327 and 57328.
3. That Mr. Adams is considering developing the property traversed by Sierra Canyon Creek and putting the flow of the creek into some type of conduit. Thus reducing the amount of infiltration by approximately half and subsequently increasing the amount of water that will need to be pumped annually from the supplemental well under Application 60616.

FINDINGS OF FACT

I.

The Protestant's attorney asserts that the use of water under Permit 9849, Certificate 2784, the underground water right that Application 60616 seeks to change, has been forfeited.

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<sup>4</sup> See report of Field Investigation #964, on file in the Office of the State Engineer.

Decreed water rights from Sierra Canyon Creek cover the entire place of use of Permit 9849, Certificate 2784. Permit 9849, Certificate 2784 is referred to as a supplemental right, to be used only when the waters of Sierra Canyon Creek are not available. It is recognized that periods of non-use may occur regarding a supplemental water right. Nevada, being a semiarid state, experiences wide variations in snowpack and surface water runoff. On some surface water systems, irrigators have found a need to supplement their surface water source. They have obtained permits to drill wells to carry them through the dry years, or dry periods on any given year. Groundwater rights in Nevada can be lost through non-use if the water is not used for extended periods.<sup>5</sup> It makes no legal or scientific sense to force the irrigator to pump a supplemental well, only for the purpose of preserving the water right when surface water is plentiful. To do so would be a waste of water which is also prohibited by Nevada Law.<sup>6</sup> Therefore, a supplemental right is not declared forfeited because of non-use. The State Engineer finds that Permit 9849, Certificate 2784, is a supplemental right and, as such, is not subject to forfeiture.

## II.

Application 60616 was filed as a supplemental right to Permits 57327 and 57328. These permits are changes of the decreed Sierra Canyon Creek water. In no way will Application 60616 be approved as a permanent right, as the protestant's attorney alleges. The State Engineer finds that Application 60616 seeks to become a permit that is supplemental to existing, permanent rights. The State Engineer finds that if Application 60616 is approved, the quantity of water allowed under this permit and Permits 57327 and 57328 will be limited to the maximum quantity that may be extracted from the infiltration wells (Permits 57327 and 57328). Application 60616 will not add any water to this quantity, but rather will only be allowed to be pumped when there is insufficient surface water available.

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<sup>5</sup> NRS 534.090.

<sup>6</sup> NRS 533.045, 533.050 and 533.070(1).

III.

The several water issues referred to in the protest are not related to Application 60616 or Permits 57327 and 57328. Instead, the Protestant wishes the State Engineer to consider the use and management of water under Permits 57248 and 57249, which changed decreed rights of the Carson River. At the field investigation, the protestant failed to show that the approval of Application 60616 would have any impact on his existing water rights. The State Engineer finds that the approval of Application 60616 would have no conflict with existing rights.

IV.

Permits 57327 and 57328 are for quasi-municipal use to serve homes in the Genoa Lakes Project. The source of water is that portion of Sierra Canyon Creek that is infiltrated to the wells. Application 60616 would provide a back-up source of water when Sierra Canyon Creek does not produce the quantity of water allowed under Permits 57327 and 57328. The State Engineer finds that the approval of Application 60616 would be a beneficial use and not prove detrimental to the public interest.

V.

At some future time, the Protestant may develop that portion of his property that is traversed by Sierra Canyon Creek. This may affect the quantity of water that is allowed to infiltrate into the ground, thereby increasing the dependence on supplemental groundwater under Application 60616. The State Engineer finds that any plan for development that the Protestant may submit in the future will be evaluated on its merits and on the prevailing conditions at that time.

The State Engineer must approve or deny Application 60616 on the basis of the information that is presently available. The protestant has not presented any plans to develop his property, and therefore, little weight can be given to any future plans that the protestant may have. The State Engineer finds that Application 60616 must be evaluated on its merits and on the information that is before him.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.<sup>7</sup>

II.

The State Engineer is prohibited by law from granting a permit under an application to change an existing right where:

- A. The proposed use conflicts with existing rights, or
- B. The proposed use threatens to prove detrimental to the public interest.<sup>8</sup>

III.

The possible forfeiture of Permit 9849, Certificate 2784 is not considered here because forfeiture does not apply to supplemental water rights.

IV.

Application 60616 was filed for a permit that would be supplemental to Permits 57327 and 57328. The quantity of water allowed under Application 60616 and Permits 57327 and 57328 is limited to the maximum quantity of water that can be extracted from the infiltration wells. The State Engineer concludes that Application 60616 was filed for a supplemental permit and does not seek to appropriate any additional water.

V.

No plans for the possible future development of Mr. Adams' land have been submitted to the State Engineer. Therefore, any affect of Application 60616 on those plans cannot be evaluated at this time.

VI.

The State Engineer concludes that the approval of Application 60616 does not conflict with existing rights and would not prove detrimental to the public interest.

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<sup>7</sup> NRS 533 and 534.

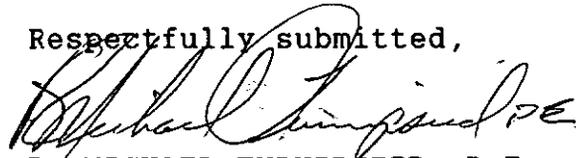
<sup>8</sup> NRS 533.370.

RULING

The protest to Application 60616 is hereby overruled and Application 60616 is hereby approved, subject to the following:

1. Existing rights,
2. Payment of statutory fees,
3. The amount of water allowed to be used in conjunction with Permit 57327 and 57328 is limited to 280 acre feet.
4. Permit 60616 is further limited to that amount that can not be infiltrated to the natural channel of Sierra Canyon Creek and recaptured under Permits 57327 and 57328.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SR/pm

Dated this 13th day of  
September, 1995.