

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

IN THE MATTER OF APPLICATION 56696 FILED)
TO CHANGE THE POINT OF DIVERSION OF A)
PORTION OF THE WATER OF AN UNDERGROUND)
SOURCE IN THE DIXIE CREEK - TENMILE CREEK)
GROUNDWATER BASIN (48), ELKO COUNTY, NEVADA)

RULING

4302

GENERAL

I.

Application 56696¹ was filed on August 23, 1991, by Thomas Achurra to change the point of diversion of 1.2 cubic feet per second (cfs), a portion of the water heretofore appropriated under Permit 41509². The water is to be used for irrigation and domestic purposes on 65.062 acres of land within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 30, T.33N., R.57E., M.D.B.&M. The proposed point of diversion is within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 30. The existing point of diversion is within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 30.

II.

Permit 56726-T³ was approved on October 24, 1991, for one year to temporarily use water from a new well located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 30, T.33N., R.57E. The permit was approved for 1.2 cfs, 137.78 acre feet annually (AFA), for irrigation and domestic purposes.

¹ File No. 56696, official records of the Office of the State Engineer.

² File No. 41509, official records of the Office of the State Engineer.

³ File No. 56726-T, official records of the Office of the State Engineer.

III.

Marilyn Tipton timely protested Application 56696 on the following grounds:⁴

As a domestic well water user in Section 30, T.33N., R.57E., we feel that it should be brought to the attention of the State Water Engineer of Nevada that our domestic wells are suffering now in the Lipparelli Subdivision.

As you well know irrigation season in Elko County is from April 15th to August 15th, and no one needs 1.2 cfs., for domestic water year around. Therefore we formally protest any new or re-drilling of wells under old permits for year around use of irrigation within this populated area that depends on domestic well use, and only permits to suppliment [sic] surface water rights should be allowed. The State Water Engineer of Nevada should be well aware that he has approved a Temporary Permit #56726T under Permit #41509. How can the State Water Department approve a Temporary or Permanent Permit under Permit No. 41509 that should have been revoked under N.R.S. 533.395 back in August 23, 1988. This well has never produced 2.0 c.f.s.; never been used to irrigate with, nor is there any pipelines, ditches, or sprinklers. This well has only been used for domestic use.

Therefore, we request the State Engineer to deny Permit #56696, and revoke Permit #41509 and Temporary Permit No 56726T.

Gregory E. and Cheryl M. Pyatt; Charles D. Perry and Robert D. and Susan Jane Black each timely protested Application 56696 on the following grounds:⁵

As a domestic well water user in Section 30, T.33N., R.57E., we feel that it should be brought to the attention of the Water State Engineer of Nevada that our domestic wells are suffering now in the Lipparelli Subdivision. As you well know irrigation season in Elko County is from April 15th to August 15th; there

⁴ Exhibit No. 3, Public Administrative Hearing before the State Engineer, March 25, 1992.

⁵ Exhibit Nos. 4, 5, and 6, Public Administrative Hearing before the State Engineer, March 25, 1992.

is no need for 1.2 cfs. of water use for domestic year around. Therefore we formally protest any new or old diversion of drilling of wells for irrigation for year around use within this populated area that depends on domestic well use.

Therefore, the protestants request that the application be denied.

IV.

After all parties were noticed by certified mail,⁶ a public administrative hearing was held before representatives of the State Engineer.⁷ At the hearing, administrative notice was taken of the records of the Office of the State Engineer.⁸

FINDINGS OF FACTS

I.

The protestants are concerned about the possible lowering of the groundwater table and the negative impacts on their domestic wells that may be caused by the pumping of the new well under change Application 56696.⁹ The protestants did not present any evidence to support this position. The nearest protestant's well is about 600 feet from the existing point of diversion and about 1,600 feet from the proposed point of diversion.¹⁰ Because the applicant proposes to pump from a well located farther from the protestants' wells, any drawdown caused by the applicant's new well will be less than that which would be observed under present

⁶ Exhibit No. 1, Public Administrative Hearing before the State Engineer, March 25, 1992.

⁷ Transcript of Public Administrative Hearing before the State Engineer, March 25, 1992.

⁸ Transcript p. 5, Public Administrative Hearing before the State Engineer, March 25, 1992.

⁹ Exhibit Nos. 3, 4, 5, and 6, Public Administrative Hearing before the State Engineer, March 25, 1992.

¹⁰ Transcript p. 31 and Exhibit Nos. 7 and 8, Public Administrative Hearing before the State Engineer, March 25, 1992.

conditions. The State Engineer finds that the approval of Application 56696 will reduce any impact on the existing wells. The State Engineer further finds that the approval of Application 56696 will not threaten to prove detrimental to the public interest.

II.

One of the protestants, Mr. Perry, has an irrigation well (Permit 47118) located approximately 2,600 feet from the existing point of diversion under Permit 41509 and approximately 3,400 feet from the proposed point of diversion of Application 56696.¹¹ This well is the closest permitted well to the applicant's wells. There is no evidence on the record indicating any conflict with Mr. Perry's well caused by the pumping of the applicant's existing well or any anticipated interference with pumping of the proposed well. The State Engineer finds that there is no evidence that demonstrates a conflict with any existing rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action.¹²

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:

- A. The proposed use conflicts with existing rights, or
- B. The proposed use threatens to prove detrimental to the public interest.¹³

¹¹ Exhibit Nos. 7 and 8, Public Administrative Hearing before the State Engineer, March 25, 1992. See also map filed in support of Permit 47118, Official Records in the Office of the State Engineer.

¹² NRS Chapter 533 and 534.

¹³ NRS 533.370

III.

The State Engineer concludes that the approval of Application 56696 will result in less impact on the protestants' existing domestic wells. The State Engineer further concludes that the approval of said application will not threaten to prove detrimental to the public interest.

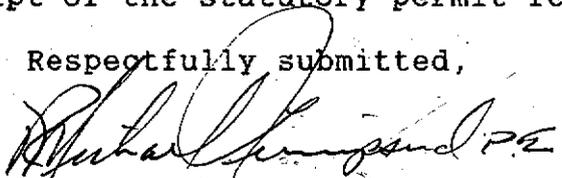
IV.

The State Engineer concludes that the approval of Application 56696 will not conflict with any existing water rights.

RULING

The protests to Application 56696 are hereby overruled on the grounds that issuing of the permit would not interfere with existing rights nor threaten to be detrimental to the public interest. Application 56696 is hereby approved subject to existing rights and the receipt of the statutory permit fees.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/GGJ/ab

Dated this 21st day of
February, 1996.