

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

IN THE MATTER OF APPLICATIONS 61418 AND)
61419 FILED TO CHANGE THE POINTS OF)
DIVERSION OF AN UNDERGROUND SOURCE)
WITHIN THE GOSHUTE VALLEY GROUNDWATER)
BASIN (187), ELKO COUNTY, NEVADA)

RULING

4623

GENERAL

I.

Application 61418 was filed on July 24, 1995, by M.E. Clingman to change the point of diversion of 2.0 cubic feet per second (cfs), not to exceed 471.8 million gallons annually (mga), of underground water previously appropriated under Permit 41544 for quasi-municipal and domestic purposes within Section 35, T.36N., R.67E., M.D.B. & M., and Section 1, T.35N., R.67E., M.D.B. & M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T.35N., R.67E., M.D.B. & M.¹

II.

Application 61419 was filed on July 24, 1995, by M.E. Clingman to change the point of diversion of 2.0 cfs, not to exceed 471.8 mga, of underground water previously appropriated under Permit 41543 for quasi-municipal and domestic purposes within Section 35, T.36N., R.67E., M.D.B. & M., and Section 1, T.35N., R.67E., M.D.B. & M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T.36N., R.67E., M.D.B. & M.²

III.

Applications 61418 and 61419 were timely protested by the City of West Wendover, Nevada, on the grounds that the:

[a]pplicant has held the prior right to this and companion applications and permits for 15 years, without any development, contrary to requirements for diligence. The combined cities of Wendover, Utah, and West Wendover, Nevada, through permits #29433, 39110, 49060, and 49422,

¹ File No. 61418, official records in the office of the State Engineer.

² File No. 61419, official records in the office of the State Engineer.

plus pending change applications #49423 and 49595 rely upon this underground source being sought by the applicant, for the delivery of municipal supplies to those communities. Recent growth trends, indicated by pumping histories, will require a corresponding increase in pumping and delivery system capability toward, and beyond, the duty presently granted.

Therefore, the protestant requested that the applications be denied.^{1,2}

FINDINGS OF FACT

I.

A review of Permits 41543 and 41544, which are the base rights for change Applications 61418 and 61419, indicates that Applications for Extension of Time were submitted in a timely manner and in full compliance with the provisions of NRS § 533.380(3) for both Permits 41543 and 41544. In 1984 - 1985 \$53,000.00 dollars was spent to drill several test wells. By 1987, over \$125,000.00 dollars had been spent on drilling unsuccessful test wells. In 1988, the permittee filed applications to change the points of diversion from those identified under Permits 41543 and 41544 after entering into an agreement with Goshute Corporation to mutually develop the water rights. While change Applications 52300 and 52301 were ready for action in 1988, the State Engineer had not acted on those applications when they were withdrawn in 1995 after Goshute Corporation entered bankruptcy. The State Engineer finds that the record indicates that the permittee did provide evidence of reasonable diligence in pursuing perfection of the applications.³

II.

The protestant requests that Applications 61418 and 61419 be denied based upon the protestant's opinion that the subject municipalities will continue to grow, and will therefore require

³ File Nos. 41543 and 41544, official records in the office of the State Engineer.

water rights in addition to the annual duty presently granted. The State Engineer finds that this opinion, whether found at a future date to be correct or incorrect, is not a valid basis for protesting the granting of Applications 61418 and 61419. Nevada is a prior appropriation state based on the concept of first in time, first in right. Anticipated future needs of one entity is not a sufficient reason for denying a present applicant a right to the use of the existing water rights.

III.

Two of the seven permitted water rights owned by the protestant, Permit 29433 and Permit 39110, are senior in priority to the two water rights being changed by the applicant by change Applications 61418 and 61419. The distances between the points of diversion (POD's) of the base rights of change Applications 61418 and 61419 and Permit 29433 are 6,930' and 7,300', respectively, for an average distance of 7,115'. The distances between the POD's of Applications 61418 and 61419 and Permit 29433 are 6,100' and 6,720', respectively. Accordingly, change Applications 61418 and 61419 would decrease the average distance between the existing and proposed POD's of these change applications and Permit 29433 by a total of 705'; however, the State Engineer finds there is still over 6400' between the protestant's POD and those identified under the change applications.

The distances between the POD's of the base rights of Applications 61418 and 61419 and Permit 39110 are 9,050' and 9,300', respectively, for an average distance of 9,175'. The distances between the POD's of Applications 61418 and 61419 and Permit 39110 are 8,000' and 8,840', respectively. Accordingly, change Applications 61418 and 61419 would decrease the average distance between the existing and proposed POD's of these change applications and Permit 39110 by a total of 775'; however, the State Engineer finds there is still over 8,400' between the protestant's POD and those identified under the change

applications. Although the distance between the two senior water rights owned by the protestant, Permit 29433 and Permit 39111, and the two protested water rights being changed, Applications 61418 and 61419, will decrease as a result of approval of these change applications, the State Engineer finds that the amount of the decrease in distance is relatively minor and should result in no measurable effect on the protestant's wells under Permits 29433 and 39110.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting a permit under a change application to appropriate 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.⁵

III.

The State Engineer concludes that the records of the State Engineer indicate the permittee has provided evidence indicating reasonable diligence in pursuing perfection of the permits.

IV.

The State Engineer concludes that anticipated future needs of an entity is not a sufficient reason to deny a presently filed change application.

V.

The State Engineer concludes that approval of change Applications 61418 and 61419 will not conflict with existing rights.

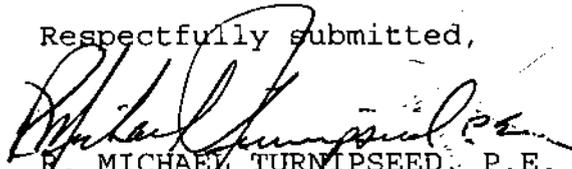
⁴ NRS Chapters 533 and 534.

⁵ NRS 533.370.

RULING

The protests to Applications 61418 and 61419 are overruled and said applications are hereby approved subject to existing rights and the payment of the statutory permit fees.

Respectfully submitted,



E. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/RAD/cl

Dated this 13th day of
April, 1998.