

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

IN THE MATTER OF REQUESTS FOR )  
EXTENSIONS OF TIME TO PREVENT )  
FORFEITURE AS TO PERMITS 22892 )  
AND 27126 GRANTED TO APPROPRIATE )  
THE PUBLIC WATER FROM AN )  
UNDERGROUND SOURCE WITHIN THE )  
CLOVERS AREA HYDROGRAPHIC BASIN )  
(64), LANDER COUNTY, NEVADA. )

RULING

#5328

GENERAL

I.

Permit 22892 was granted on August 1, 1966, to appropriate 5.4 cubic feet per second (cfs) of water from the underground waters of the Clovers Area Hydrographic Basin, Lander County, Nevada, for irrigation and domestic purposes within the N½ of Section 24, T.34N., R.44E., M.D.B. & M. The point of diversion is described as being located within the SW¼ NW¼ of said Section 24.<sup>1</sup> Certificate 8057 was issued under Permit 22892 on April 2, 1973, for 2.68 cfs, not to exceed 1250.88 acre-feet annually.

II.

Permit 27126 was granted on April 16, 1973, to appropriate 2.7 cfs of water from the underground waters of the Clovers Area Hydrographic Basin, Lander County, Nevada, for irrigation and domestic purposes within the N½ of Section 24, T.34N., R.44E., M.D.B. & M. The point of diversion is described as being located within the SW¼ NE¼ of said Section 24.<sup>2</sup> Certificate 8163 was issued under Permit 27126 on November 2, 1973, for 2.68 cfs, not to exceed 1250.88 acre-feet annually. Permit 27126, Certificate 8163, is supplemental to Permit 22892, Certificate 8057.

<sup>1</sup> File No. 22892, official records in the Office of the State Engineer.

<sup>2</sup> File No. 27126, official records in the Office of the State Engineer.

**III.**

Through a series of assignments Permits 22892 and 27126 came to be held by Sierra Pacific Power Company (Sierra) and Idaho Power Company.

**IV.**

On March 18, 1996, the State Engineer notified Sierra Pacific Power Company that the waters authorized for appropriation under Permits 22892 and 27126 had not been used for four consecutive years and that applications for extensions of time to prevent forfeiture or a proof of resumption of use of the waters to beneficial use were required to be filed in the Office of the State Engineer within one year or the permits would be subject to forfeiture.<sup>1, 2</sup>

**V.**

On June 30, 1998, the State Engineer declared Permits 22892 and 27126 forfeited.<sup>1, 2</sup>

**VI.**

Sierra appealed said declarations of forfeiture and a Stipulation for Entry of Judgment was entered into by the parties on July 22, 1999. The Stipulation provided that the State Engineer would reinstate Permits 22892 and 27126 under certain conditions. Those conditions included that Sierra would file applications for extensions of time to prevent forfeiture and would within the one year of the granting of the extensions of time to prevent forfeiture purchase and install center pivot irrigation systems necessary to resume use of the water rights and attempt to plant and begin irrigation of an appropriate crop. If Sierra satisfied this requirement, the State Engineer would grant an additional one-year extension of time to prevent forfeiture of the water rights and then Sierra would file proof of resumption of use of said water rights authorized for appropriation under the permits. The Stipulation further provided that the State Engineer may grant additional extensions of time to prevent forfeiture in accordance with NRS 534.090(2).<sup>1, 2</sup>

**VII.**

On September 7, 1999, Sierra filed applications for extensions of time to prevent forfeiture as required by the Stipulation. Said applications were granted through September 7, 2000.<sup>1, 2</sup>

On August 22, 2000, Sierra filed additional applications for extensions of time. In the applications, Sierra indicated that a pivot and pump were installed, alfalfa planted and water applied to a crop. The State Engineer granted the applications for extensions of time to prevent forfeiture through September 7, 2001.<sup>1, 2</sup>

On August 1, 2001, as to Permit 22892, Sierra filed a proof of resumption of water to beneficial use indicating that 148.51 acres had been irrigated and 594 acre-feet of water use had been resumed. On August 7, 2001, the State Engineer indicated to Sierra that the proof of resumption of water to beneficial use was only good as to a portion of Permit 22892 and 27126; therefore, unless the required proof of resumption of water to beneficial use or an application for extension of time to prevent forfeiture was filed prior to the expiration of the time necessary to work the forfeiture, the subject certificated water rights would be subject to forfeiture.<sup>1, 2</sup>

On September 6, 2001, Sierra filed applications for extensions of time to prevent forfeiture indicating that two new pivots had been constructed in the same section as the place of use identified under Permits 22892 and 27126, but that groundwater data was needed to ensure that an additional pivot could be operated in the same section of land without impacting existing uses. Sierra indicated that it was using the point of diversion under Permit 27126 to monitor groundwater levels and that to date said monitoring has revealed there was sufficient water available to support the additional pivot contemplated. Sierra requested one additional year to continue to monitor groundwater levels in

Section 24, and if supported, would begin installation of the additional center pivot irrigation system. The State Engineer granted said application for extension of time through September 7, 2002.<sup>1, 2</sup>

On September 6, 2002, Sierra filed additional applications for extensions of time to prevent forfeiture giving essentially the same reasons as provided on the 2001 applications for extensions of time, with the additional reason that it was negotiating the possible sale or lease of Permits 22892 and 27126 and land to which they are appurtenant to the owner of the S½ of said Section 24. The State Engineer again granted the applications for extensions of time to prevent forfeiture through September 7, 2003.<sup>1, 2</sup>

On September 5, 2003, Sierra again filed applications for extensions of time to prevent forfeiture giving the same reasoning as given in 2001 and 2002, but now without the reason of negotiating the sale of the land and appurtenant water rights. Said applications were protested by Russell Parker and Tammy Parker.<sup>1, 2</sup>

The Parkers requested the State Engineer not grant any additional extensions of time to prevent forfeiture on the grounds that Sierra has failed to comply with Judgment entered pursuant to the 1999 Stipulation in that it has not installed a center pivot on the E½ of Section 24 under Permit 27126 and has not resumed beneficial use of any of the water under Permit 27126 or the full quantity under Permit 22892. The Parkers indicated that Sierra's use of water under 22892 adversely affected use of water under their water right in that they had to drill a deeper replacement well and more interference could occur if additional use of water is resumed. The Parkers allege that Sierra has had ample time and resources to resume use of the water and further has provided that its monitoring has indicated for two years in a row there is sufficient water to put in the remaining pivot. As to the

negotiations with the Parkers for the purchase of the land and water rights, the Parkers indicate that the declining water table in the Clovers Area basin, the rising cost of power and potential well interference caused them to decide that developing the Sierra acreage would not be prudent. The Parkers allege that Sierra has declined their offer and instead indicated that it was evaluating the property and its value based on industrial water right values. The Parkers further complain as to how Sierra's property is irrigated and allege that any further extensions of time will amount to a grant of time for speculation and waste of water.<sup>1, 2</sup>

**VIII.**

On December 19, 2003, Sierra filed a response to the allegations of the Parkers' protest.<sup>1, 2</sup>

**FINDINGS OF FACT**

**I.**

Section 24, T.34N., R.44E., M.D.B.&M. was originally covered by four permits. The north half was covered by the permits now held by Sierra (22892 and 27126) and the south half was covered by the permits now held by the Parkers (22891 and 27125). All four of the permits went through a similar noticing of four-years of non-use and the possibility of being subject to forfeiture.<sup>3</sup> On January 7, 1999, the Parkers filed a Proof of Resumption of Water to Beneficial Use under Permit 22891. In that document, the Parkers indicated that due to the depth, size and age of the current well, only a portion of the usage was possible at that time and they planned to place the rest of the water back to beneficial use by drilling a second, larger well. This is prior to any resumption of use by Sierra under its authorized water rights. Extensions of time to prevent forfeiture filed by the Parkers in 1999 indicate the Parkers intended to drill this second

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<sup>3</sup> File Nos. 22891, 22892, 27125, 27126, official records in the Office of the State Engineer.

well when finances allowed. A 2000 application for extension of time to prevent forfeiture filed by the Parkers in reference to Permit 22891 indicated that in 2001 they would be filing a change application to develop a second alfalfa field.

On February 11, 2002, the Parkers filed Application 68486 requesting to change the point of diversion for a portion of the water previously appropriated under Permit 22891.<sup>4</sup> The Parkers requested to move ½ the diversion rate to a well in the NE¼ SE¼ of said Section 24. Sierra filed a protest to said change application and requested that any new permit be conditioned on reduction of the diversion rate or total rate of withdrawal if groundwater levels fell a certain number of feet in a certain amount of time. The Parkers filed an answer to Sierra's protest alleging that their point of diversion was far enough away from Sierra's wells that it would be highly unlikely there would be any hydraulic interference between the Parkers' wells and Sierra's due to the change application. The Parkers argued there was no proof of hydraulic connection and any restriction of their well would have a negligible effect on groundwater levels associated with Sierra's wells. They further alleged that the general decline of groundwater levels in the area is a matter of historic record, may be caused by mine dewatering, industrial pumping, long-term irrigation pumping by farmers and successive years of drought.

Sierra and the Parkers have water rights with equal priorities under Permits 22891 and 22892. When the State Engineer issued Ruling No. 5270 on Application 68486,<sup>5</sup> he found the net impact would cause less impact in Sierra's well than if the entire amount was pumped under Permit 22891 and would not cause an

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<sup>4</sup> File No. 68486, official records in the Office of the State Engineer.

<sup>5</sup> State Engineer's Ruling No. 5270, dated August 27, 2003, official records in the Office of the State Engineer.

unreasonable lowering of the groundwater level in Sierra's wells. If the Parkers' pumping under an equal priority water right is not causing an unreasonable lowering of the groundwater level in Sierra's well, conversely, Sierra's pumping would not cause an unreasonable lowering in the Parkers' well, or if the lowering does become unreasonable, both Sierra and the Parkers would have to reduce their pumping jointly since their priorities are equal.

Sierra presented a summary of water-level measurements from data collected by the State Engineer's office, and that data indicates that since 1999 the water level the Parkers' point of diversion under Permit 22891 has remained almost constant even though Sierra resumed pumping of some of the water in 2001.

The State Engineer finds that Sierra's use of water under Permit 22892 since 2001 has not adversely affected the Parkers' water right under 22891.

## II.

The State Engineer finds that the Parkers' issues with Sierra negotiating or withdrawing from negotiating from the sale of the land and appurtenant water rights to them is not highly relevant to his review of whether to grant the applications for extensions of time to prevent the forfeiture.

## III.

In Sierra's response to the protest, it indicates that it has determined there is sufficient water available and currently plans to install the additional pivot in the Spring of 2004. The State Engineer finds that the 1999 Judgment provided the State Engineer with the discretion to grant additional extensions he deemed appropriate.

## IV.

Sierra's response to the protest sets forth a schedule for Sierra taking action to resume use of the rest of the water subject to forfeiture. It sets forth a two-year process that requires the filing of an additional request for extension of time

in September 2004. Sierra indicates that for it to go forward with testing the well, installing the new pivot irrigation system and placing the water to beneficial use requires that it needs some indication by the State Engineer that the request for extension of time to prevent forfeiture to be filed in September 2004 would be granted regardless of any protest filed. The State Engineer finds he will not provide an indication of whether any future application for extension of time to prevent forfeiture will be granted. He only acts on matters that are specifically before him.

V.

The Parkers allege that Sierra improperly manages the use of its water. The State Engineer finds Sierra has not used more water than authorized under its permits.

VI.

The Parkers allege that Sierra is only requesting additional time for speculation, i.e., to convert the use of the water to industrial use. The State Engineer finds a condition of the 1999 Judgment, which allowed for the reinstatement of Permits 22892 and 27126 provides that no application for changing the point of diversion, place or manner of use can be filed until after proof of resumption of the waters to beneficial use have been filed.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action.<sup>6</sup>

II.

The State Engineer concludes the allegations of the Parkers' protest do not merit denial of Sierra's requests for extensions of time to prevent the forfeiture of water right Permit 22892, Certificate 8057, and Permit 27126, Certificate 8163.

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<sup>6</sup> NRS chapters 533 and 534.

**RULING**

The protests to the Application(s) for Extension(s) of Time to Prevent Forfeiture are hereby overruled and the extensions are hereby granted for the period of time from September 7, 2003, to September 7, 2004. Totalizing meters must be installed and maintained in the discharge pipelines near the points of diversion and accurate measurements must be kept of any water placed to beneficial use. The totalizing meters must be installed before the proof of resumption of water to beneficial use is filed.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/SJT/jm

Dated this 26th day of  
February, 2004.