

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

IN THE MATTER OF APPLICATION 59329)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF SALT MARSH VALLEY SPRING)
AKA McCOY SPRING WITHIN THE DIXIE)
VALLEY HYDROGRAPHIC BASIN, (128))
PERSHING COUNTY, NEVADA.)

RULING
#5908

GENERAL

I.

Application 59329 was filed on October 19, 1993, by the Joe Saval Company to appropriate 1.983 cubic feet per second (cfs) of the waters of Salt Marsh Valley Spring, a.k.a. McCoy Spring, for irrigation and domestic purposes. The proposed place of use is comprised of 193.85 acres of land located within portions of the S½ of Section 29, the N½ of Section 32, in addition to the NE¼ of Section 31, all within T.26N., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 33, T.26N., R.39E., M.D.B.&M. The period of use requested by the Applicant is the off season flow not covered under Permit 4373, Certificate 645.¹ This period begins on October 1st and concludes on March 31st of the following year.²

II.

Application 59329 was timely protested on December 27, 1993, by Jerry Kelly, on the grounds that its approval would conflict with his proposed use of Salt Marsh Valley Spring. It was further alleged that the Applicant had no easement to transport water from this spring.¹

¹ File No. 4373, Certificate 645, official records in the Office of the State Engineer.

² File No. 59329, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

During the 1990s, a dispute arose regarding the allocation of water from Salt Marsh Valley Hot Spring. Through the filing of Proof V-04740, Jerry Kelly sought to secure first use of the waters of the spring.³ The Kelly filing was opposed by the Saval Ranch, which is entitled to an existing seasonal use of the water for irrigation purposes under Permit 4373, Certificate 645. Both the Joe Saval Company and Jerry Kelly filed water right applications that requested the period of use not covered by Permit 4373, Certificate 645, with the disputing parties protesting each other's applications. A civil suit ensued between both parties that was presided over by Judge Wagner in the Sixth Judicial District Court, of the State of Nevada, in and for the County of Pershing (Court).⁴ By Court Order issued on December 30, 1994, State Engineer Turnipseed was instructed to make a final disposition regarding Proof V-04740, in accordance with the adjudicatory process, outlined under the Nevada Revised Statutes chapter 533.³ In compliance with the Court's order, the State Engineer initiated a formal adjudication of Kelly's claim of historic use, which culminated on August 23, 1999, with the issuance of the Salt Marsh Valley Hot Spring Decree. Contained within this decree was a Conclusion of Law in which Judge Wagner stated that, "The State Engineer properly concluded that no claim of vested right could be established to the waters of Salt Marsh Hot Springs due to its non-existence before October 2, 1915."⁴

The rejection of Proof V-04740, removed one of two water right filings that Kelly claimed in his protest would be adversely impacted by the approval of Application 59329. The second filing,

³ File No. V-04740, official records in the Office of the State Engineer.

⁴ Findings of Fact, Conclusions of Law and Decree, In The Matter Of The Determination Of the Relative Rights In And To The Waters Of Salt Marsh Valley Spring, a.k.a. McCoy Hot Springs And Salt Marsh Valley Spring In Pershing County, Nevada, Sixth Judicial Court Of The State Of Nevada, In And For The County Of Pershing, August 23, 1999.

Application 59314 was withdrawn by Kelly's successor in interest on February 2, 2007, leaving the Saval Ranch as the sole water right holder on Salt Marsh Valley Hot Spring.⁵

Application 59329, if approved, would expand the period of use issued under Permit 4373, Certificate 645, providing the Applicant a year round beneficial use of the thermal waters generated by the spring. The value of this off season right was recognized by the Court and included within the Stipulation and Order reached between the Joe Saval Company and Jerry Kelly, which was signed by Judge Wagner on June 30, 1999. Among the points agreed to by both parties was the condition that, "That Plaintiffs will be allowed irrigation rights for the period of October 1st through March 1st."⁶ The fulfillment of this condition is reflected by the filing of Application 59329. The State Engineer finds that the approval of Application 59329, would not conflict with existing water rights, nor would it violate the terms set forth in the Salt Marsh Valley Hot Spring Decree.

II.

The protest to Application 59329 was also based upon the claim that the Applicant did not have an easement to transport water from the spring. This issue was also addressed by Judge Wagner in his Stipulation and Order under point "B", where it is stated that, the Plaintiff (Joe Saval Company, LLC) will be granted an easement for "...the sole purpose of reasonably maintaining the existing right of way from the point of service".⁶ The State Engineer finds that the issue of easement has been addressed by the Court and warrants no additional consideration in regard to Application 59329.

⁵ File No. 59314, official records in the Office of the State Engineer.

⁶ Stipulation and Order, Case File No. CV-94-7623, Dept. No. 1, Sixth Judicial Court of the State Of Nevada, In And For The County Of Pershing, June 30, 1999.

III.

On September 18, 2008, the flow of Salt Marsh Valley Hot Spring was measured by representatives of the Nevada Division of Water Resources. Using a velocity meter, the flow occurring in the main ditch, a short distance downstream from the spring was calculated to be 1.21 cfs. At this flow rate, the waters of Salt Marsh Valley Hot Spring are fully appropriated from April 1st to October 1st, under Permit 4373, Certificate 645. However, outside of this time period, the spring's water is not diverted under any existing water rights, and as such, is available for appropriation.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁸

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The waters of Salt Marsh Valley Hot Spring are currently held under a single perfected water right that was issued for a seasonal period of use. The issuance of Application 59329 would allow an appropriation of water to occur during the off season, which is not covered by this existing right. The State Engineer

⁷ NRS chapter 533.

⁸ NRS § 533.370(5).

concludes that the approval of Application 59329 would not conflict with existing rights and that there is unappropriated water at the source.

RULING

The protest to Application 59329 is overruled and Application 59329 is hereby approved, subject to existing rights and the payment of the statutory permit fee.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/MB/jm

Dated this 12th day of
November, 2008.