

IN THE MATTER OF APPLICATION)  
27560 TO APPROPRIATE WATER )  
FROM AN UNNAMED SPRING (AKA )  
RAILROAD SPRINGS) IN ELKO )  
COUNTY, NEVADA. )

R U L I N G

GENERAL:

Application 27560 was filed on June 21, 1973, in the name of Taylors, Ltd. to appropriate 0.312 c.f.s. of water from an Unnamed Spring (aka Railroad Springs), the point of diversion being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 29, T.37N., R.62E., M.D.B.&M. The water is proposed to be used for stock watering of 1000 head of cattle and for domestic use within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  and the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 29.

A protest to the granting of Application 27560 was filed on September 26, 1973, in the name of the City of Wells on the grounds that: "The following real property and water rights and existing water pipeline and related facilities were deeded by Central Pacific Railway Company to the City of Wells by that certain Deed dated September 2, 1953, recorded at Book 69, Page 334 of Deeds, Elko County, Nevada; the northwest quarter of the northeast quarter of Section 29, Township 37 North, Range 62 East M.D.B.&M., containing an area of 40.00 acres, more or less. At the time of the execution of said deed, the Central Pacific Railway Company had a vested water right to the water coming from Railroad Springs and said right was conveyed to the City of Wells.

A second protest was filed on October 3, 1973, in the name of James Smiley and Edward Smiley on the grounds that the Central Pacific Railway Co. had established vested rights to the water coming from Railroad Springs and had subsequently deeded the water rights and existing water system to the City of Wells as previously described herein under the City of Wells' protest. The protest further stated that "on April 6, 1956, by agreement with the City of Wells, Orville S. Smiley, predecessor in interest of Protestants herein, acquired an interest in said spring, water and water line according to the terms of that certain agreement attached hereto as Exhibit B and incorporated herein by reference. The protestants herein acquired the interest herein of Orville S. Smiley through the estates of Orville S. Smiley and Evelyn M. Smiley, his wife, copies of said Decree of Distribution being attached hereto as Exhibits C and D and incorporated herein by reference."

Both protests seek denial of Application 27560. The application became ready for action by the State Engineer's Office on October 23, 1973. On February 23, 1976, ownership of Application 27560 was assigned from Taylors, Ltd. to Jack G. Taylor in accordance with a certified copy of a deed dated December 31, 1975 which was submitted to the office of the State Engineer.

A field investigation into the matter of protested Application 27560 was conducted by members of the State Engineer's Office on October 20, 1976. The field investigation was also attended by representatives of the applicant and both protestants.

There are no appropriative rights of record on the Unnamed Spring (aka Railroad Spring), which is the source under Application 27560. The only filing on this source is Proof of Appropriation No. 01583, of record in the State Engineer's Office in the name of the Central Pacific Railway Co. Documents submitted by the City of Wells indicate that rights under Proof 01583 and the existing associated water system have been deeded to the City of Wells, although such assignment has not been made of record in the State Engineer's Office. Proof 01583 was filed on September 9, 1918, and claims a vested right in the amount of 0.23 c.f.s. (146,652 gallons per 24 hours) for locomotive use in Wells, with a small portion being used for domestic and irrigation purposes. The proof claims a priority of 1881.

Subsequent to the deeding of this proof to the City of Wells on September 2, 1953, water from the spring was used for municipal and domestic purposes within Wells, but such use was stopped due to health restrictions. The City of Wells has subsequently leased the flow from the spring for stock watering purposes to two range users in the area of Railroad Spring, one leasee being the Smiley Brothers, one of the protestants under Application 27560, and the second leasee being Kenneth L. Johns, and the water has been used each year for that purpose.

The spring has been developed by installation of a collection box and 3" pipeline which runs from the spring to the City of Wells. Water in excess of that which enters the pipeline at the collection box overflows into a stock water tank at the spring site, and thence overflows from the stock tank in an easterly direction in a natural drainage channel. The NW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 29, T.37N., R.62E., M.D.B.&M., the legal 40-acre subdivision on which the

spring is located, was deeded by the Central Pacific Railway Co. to the City of Wells along with Proof 01583. Overflow from the stock water tank runs from the NW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 29 onto adjacent public land during periods of high flow, but the 40 acres is not fenced and cattle grazing in the area of the spring have access to the water at the spring site. Such use has been limited to those periods when spring flow exceeds those uses served by the pipeline.

The limit and extent of water rights under Proof 01583 are undetermined, and can be established only through a statutory adjudication proceeding as described by NRS 533.090 through 533.320. However, evidence submitted to the State Engineer supports the existence of a valid vested right as established by railroad use initially and as perpetuated by the City of Wells through its municipal use and subsequent leasing of the water for stock watering use.

The flow of water from the spring is highly dependent upon precipitation in the immediate area. During periods of sparse precipitation, the spring flow has been observed to decrease to a level of no appreciable flow and an amount insufficient to satisfy those uses of the City of Wells. Although the limit and extent of the vested rights under Proof 01583 has not been determined, the flow of 0.23 c.f.s. claimed would exceed the average flow of the spring. Therefore, it is the opinion of the State Engineer that the issuance of a permit under Application 27560 would tend to interfere with those vested rights claimed under Proof 01583 and therefore be detrimental to the public welfare.

RULING

Application 27560 is hereby denied on the grounds that the issuance of a permit would conflict with vested rights and be detrimental to the public interest.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW:BAR:jw

Dated this 4th day of  
February, 1977.