

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 49268,) 49269, 49373, 49374, 49375, 49376, 49377,) 49378 AND 49379 FILED TO CHANGE THE POINT OF DIVERSION AND/OR PLACE OF USE OF THE WATERS OF AN UNDERGROUND SOURCE IN HONEY LAKE VALLEY, WASHOE COUNTY, NEVADA.)

RULING

GENERAL

I.

Application 49268 was filed on August 14, 1985, by Fish Springs Ranch, Ltd., to change the point of diversion and place of use of 5.4 c.f.s. of water from an underground source heretofore appropriated under Permit 44215. The proposed use is for irrigation and domestic purposes within the S1/2 Section 22 (280 acres), SW1/4 Section 23 (76 acres), N1/2 Section 27 (280 acres), Section 33 (640 acres), N1/2 SE1/4 Section 26 (80 acres) and W1/2 Section 25 (89 acres), all in T.26N., R.18E., M.D.B.&M. The proposed point of diversion is described as being within the NW1/4 SE1/4 Section 26, T.26N., R.18E., M.D.B.&M. The existing place of use is 320 acres of land located within the SW1/4 NE1/4, NW1/4 Section 27, S1/2 SW1/4 and NW1/4 SW1/4 Section 22, T.26N., R.18E., M.D.B.&M. The existing point of diversion is described as being within the SW1/4 NW1/4 Section 27, T.26N., R.18E., M.D.B.&M.¹

Application 49269 was filed on August 14, 1985, by Fish Springs Ranch, Ltd., to change the point of diversion and place of use of 1.0 c.f.s., a portion of water from an underground source heretofore appropriated under Permit 38543. The proposed use is for irrigation and domestic purposes within the S1/2 Section 22 (280 acres), SW1/4 Section 23 (76 acres), N1/2 Section 27 (280 acres), Section 33 (640 acres), N1/2 SE1/4 Section 26 (80 acres) and W1/2 Section 25 (89 acres), all in T.26N., R.18E., M.D.B.&M. The proposed point of diversion is described as being within the NW1/4 SE1/4 Section 26, T.26N., R.18E., M.D.B.&M. The existing place of use is 236 acres of land located within the SE1/4 Section 22 and W1/2 SW1/4 Section 23, T.26N., R.18E., M.D.B.&M. The existing point of diversion is described as being within the NE1/4 SE1/4 Section 22, T.26N., R.18E., M.D.B.&M.¹

Application 49373 was filed on September 11, 1985, by Fish Springs Ranch, Ltd., to change the point of diversion and place of use of 1.5 c.f.s., a portion of water from an underground source heretofore appropriated under Permit 38543. The proposed use is for irrigation and domestic purposes within the S1/2 Section 22 (280 acres), SW1/4 Section 23 (76 acres), N1/2 Section 27 (280 acres), Section 33 (640 acres), N1/2 SE1/4 Section 26 (80 acres) and W1/2 Section 25 (89 acres), all in T.26N., R.18E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 25, T.26N., R.18E., M.D.B.&M. The existing place of use is 236 acres of land located within the SE1/4 Section 22 and W1/2 SW1/4 Section 23, T.26N., R.18E., M.D.B.&M. The existing point of diversion is described as being within the NE1/4 SE1/4 Section 22, T.26N., R.18E., M.D.B.&M.¹

¹ Public record in the office of the State Engineer.

Application 49374 was filed on September 11, 1985, by Fish Springs Ranch, Ltd., to change the point of diversion and place of use of 3.0 c.f.s., a portion of water from an underground source heretofore appropriated under Permit 48211. The proposed use is for irrigation and domestic purposes within the S1/2 Section 22 (280 acres), SW1/4 Section 23 (76 acres), N1/2 Section 27 (280 acres), Section 33 (640 acres), N1/2 SE1/4 Section 26 (80 acres) and W1/2 Section 25 (89 acres), all in T.26N., R.18E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 26, T.26N., R.18E., M.D.B.&M. The existing place of use is 640 acres of land located within Section 33, T.26N., R.18E., M.D.B.&M. The existing point of diversion is described as being within the SE1/4 SE1/4 Section 33, T.26N., R.18E., M.D.B.&M.¹

Application 49375 was filed on September 11, 1985, by Fish Springs Ranch, Ltd., to change the point of diversion and place of use of 1.7 c.f.s. of water from an underground source heretofore appropriated under Permit 45096. The proposed use is for irrigation and domestic purposes within the S1/2 Section 22 (280 acres), SW1/4 Section 23 (76 acres), N1/2 Section 27 (280 acres), Section 33 (640 acres), N1/2 SE1/4 Section 26 (80 acres) and W1/2 Section 25 (89 acres), all in T.26N., R.18E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 26, T.26N., R.18E., M.D.B.&M. The existing place of use is 80 acres of land located within the N1/2 NE1/4 Section 27, T.26N., R.18E., M.D.B.&M. The existing point of diversion is described as being within the NW1/4 NE1/4 Section 27, T.26N., R.18E., M.D.B.&M.¹

Application 49376 was filed on September 11, 1985, by Fish Springs Ranch, Ltd., to change the point of diversion and place of use of 1.5 c.f.s., a portion of water from an underground source heretofore appropriated under Permit 29345. The proposed use is for irrigation and domestic purposes within the S1/2 Section 22 (280 acres), SW1/4 Section 23 (76 acres), N1/2 Section 27 (280 acres), Section 33 (640 acres), N1/2 SE1/4 Section 26 (80 acres) and W1/2 Section 25 (89 acres), all in T.26N., R.18E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 25, T.26N., R.18E., M.D.B.&M. The existing place of use is 49 acres of land located within the W1/2 Section 25, T.26N., R.18E., M.D.B.&M. The existing point of diversion is described as being within the SW1/4 NE1/4 Section 25, T.26N., R.18E., M.D.B.&M.¹

Application 49377 was filed on September 11, 1985, by Fish Springs Ranch, Ltd., to change the point of diversion and place of use of 2.4 c.f.s. of water from an underground source heretofore appropriated under Permit 44213. The proposed use is for irrigation and domestic purposes within the S1/2 Section 22 (280 acres), SW1/4 Section 23 (76 acres), N1/2 Section 27 (280 acres), Section 33 (640 acres), N1/2 SE1/4 Section 26 (80 acres) and W1/2 Section 25 (89 acres), all in T.26N., R.18E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 26, T.26N., R.18E., M.D.B.&M. The existing place of use is 120 acres of land located within the N1/2 SE1/4 Section 26 and NW1/4 SW1/4 Section 25, T.26N., R.18E., M.D.B.&M. The existing point of diversion is described as being within the NE1/4 SE1/4 Section 26, T.26N., R.18E., M.D.B.&M.¹

Application 49378 was filed on September 11, 1985, by Fish Springs Ranch, Ltd., to change the place of use² of 1.0 c.f.s., a portion of water from an underground source heretofore appropriated under Permit 29344. The proposed use is for irrigation and domestic purposes within the S1/2 Section 22 (280 acres), SW1/4 Section 23 (76 acres), N1/2 Section 27 (280 acres), Section 33 (640 acres), N1/2 SE1/4 Section 26 (80 acres) and W1/2 Section 25 (89 acres), all in T.26N., R.18E., M.D.B.&M. The existing place of use is 49 acres of land located within the W1/2 Section 25, T.26N., R.18E., M.D.B.&M. The existing point of diversion is described as being within the NE1/4 SW1/4 Section 25, T.26N., R.18E., M.D.B.&M.¹

Application 49379 was filed on September 11, 1985, by Fish Springs Ranch, Ltd., to change the place of use³ of 1.5 c.f.s., a portion of water from an underground source heretofore appropriated under Permit 38543. The proposed use is for irrigation and domestic purposes within the S1/2 Section 22 (280 acres), SW1/4 Section 23 (76 acres), N1/2 Section 27 (280 acres), Section 33 (640 acres), N1/2 SE1/4 Section 26 (80 acres) and W1/2 Section 25 (89 acres), all in T.26N., R.18E., M.D.B.&M. The existing place of use is 236 acres of land located within the SE1/4 Section 22 and W1/2 SW1/4 Section 23, T.26N., R.18E., M.D.B.&M. The existing point of diversion is described as being within the NE1/4 SE1/4 Section 22, T.26N., R.18E., M.D.B.&M.¹

II.

Applications 49268, 49269, 49374, 49375, 49376, 49377 and 49378 were protested by the County of Lassen, California, on November 18, 1985, on the following grounds:¹

"Changes of Diversion points increase the potential for 1) impairment of existing rights in California as per Lassen County's 1982, protests, 2) Lassen County has analyzed basin hydrogeologic information since the granting of the permit for the above application. USGS, Calif. DWR and other authoritative data indicates that the above permit, along with others granted by the Nevada State Engineer in Honey Lake Basin, would (a) overdraft the Nevada portion of the Honey Lake groundwater basin by over 100% of its annual recharge, and (b) potentially accelerate degradation of groundwater quality, 3) the potential for even further overdraft and impairment of existing rights exists via export from the Honey Lake Basin to Reno. (See attached transcription of October 15, 1985 presentation to the Lassen County Supervisors by Franklyn D. Jeans, Managing General Partner, Fish Springs Ranch, Ltd.)

² Application 49378 was published as being a change in the point of diversion in addition to a change in the place of use of Permit 29344 since the bearing, distance and tie were to a different corner than originally described under Permit 29344. However, the well drilled under Permit 29344 is the same well proposed for use under Application 49378.

³ Application 49379 was published as being a change in the point of diversion of Permit 38543 in addition to a change in the place of use since the bearing, distance and tie were to a different corner than originally described under Permit 39543. However, the well drilled under Permit 38543 is the same well proposed for use under application 49379.

- 4) The Board is concerned that the time frame for perfecting the right could be extended if the application to change is granted. This would create additional uncertainty for potential industrial and agricultural use in Honey Lake Valley cause environmental degradation, - and preclude future growth and development options, effecting quality of life and increase costs to Lassen County.

Nevada's groundwater extractions in the Honey Lake Basin should not exceed Nevada's recharge." (Emphasis in original.)

"Excerpt from statement made by Franklyn D. Jeans to the Lassen County Board of Supervisors, October 15, 1985, as transcribed by the Lassen County Planning Department. Regarding the operation of Fish Springs Ranch; located in the southeastern portion of the Honey Lake Valley, Nevada:

'...We want a ranch, not a tax loss, we want a ranch that in fact will pay its own way and be a viable economic unit, and that's what we are trying to do. I guess the long and the short of it is, if in fact I were a stalking horse for the Connecticut, excuse me, Connecticut General Life Insurance Company, that's my lender, I am a stalking horse for them. If I were a stalking horse for the Sierra Pacific Power Company, I wouldn't be here, I would be down at the Sierra Pacific Power Company. Carl told me this morning that someone told him from the planning staff that Sierra Pacific Power Company paid eight thousand dollars for an acre foot of water in Warm Springs Valley. If that's true, then the water rights I now have in the east end of the Honey Lake Valley are worth 128 million bucks, and that's alot of money, that's alot of money. But I don't think it's true, number 1, and number 2, that's not what I'm out there for. I'm out there to try and build my farm and do the very best job that we can do, and we need your support in doing that. We think we're trying to be a good neighbor, trying to participate in the County and in the community, and we want you to treat us as a good neighbor. We don't want to fight with you, if we end up having to fight with you, and we end up having problems with our insurance carrier in our development, all you're going to end up doing is driving us into the arms of the Sierra Pacific Power Company, because they're the only other ones with that kind of money to get the development work done. But we don't want to do that. We want to develop our farm, we want your help in developing our farm, we want to be a good part of this entire basin's community and we ask your help in that connection. I thank you. If you have any questions I would be delighted to answer them."

Applications 49373 and 49379 were protested by the County of Lassen, California, on November 18, 1985, on the following grounds:¹

"Changes of Diversion points increase the potential for 1) impairment of existing rights in California as per Lassen County's 1982, protests, 2) Lassen County has analyzed basin hydrogeologic information since the granting of the permit for the above application. USGS, Calif. DWR and other authoritative data indicates that the above permit, along with others granted by the Nevada State Engineer in Honey Lake Basin, would (a) overdraft the Nevada portion of the Honey Lake groundwater basin by over 100% of its annual recharge, and (b) potentially accelerate degradation of groundwater quality, 3) the potential for even further overdraft and impairment of existing rights exists via export from the Honey Lake Basin to Reno. (See attached transcription of October 15, 1985 presentation to the Lassen County Supervisors by Franklyn D. Jeans, Managing General Partner, Fish Springs Ranch, Ltd.)

- 4) This application to change...if approved...apparently also result in an increased extraction rate...in excess of the rate permitted....
- 5) The Board is concerned that the time frame for perfecting the right could be extended if the application to change is granted. This would create additional uncertainty for potential industrial and agricultural use in Honey Lake Valley cause environmental degradation, - and preclude future growth and development options, effecting quality of life and increase costs to Lassen County.

Nevada's groundwater extractions in the Honey Lake Basin should not exceed Nevada's recharge." (Emphasis in original.)

"Excerpt from statement made by Franklyn D. Jeans to the Lassen County Board of Supervisors, October 15, 1985, as transcribed by the Lassen County Planning Department. Regarding the operation of Fish Springs Ranch; located in the southeastern portion of the Honey Lake Valley, Nevada:

'...We want a ranch, not a tax loss, we want a ranch that in fact will pay its own way and be a viable economic unit, and that's what we are trying to do. I guess the long and the short of it is, if in fact I were a stalking horse for the Connecticut, excuse me, Connecticut General Life Insurance Company, that's my lender, I am a stalking horse for them. If I were a stalking horse for the Sierra Pacific Power Company, I wouldn't be here, I would be down at the Sierra Pacific Power Company. Carl told me this morning that someone told him from the planning staff that Sierra Pacific Power Company paid eight thousand dollars for an acre foot of water in Warm Springs Valley. If that's true, then the water rights I now have in the east end of the Honey Lake Valley are worth 128 million bucks, and that's a lot of money, that's a lot of money. But I don't think it's true, number 1, and number 2, that's not what I'm out there for. I'm out there to try and build my farm and do the very best job that we can do, and we need your support in doing that. We think we're trying to be a good neighbor, trying to participate in the County and in the community, and we want you to treat us as a good neighbor. We don't want to fight with you, if we end up having to fight with you, and we end up having problems with our insurance carrier in our

development, all you're going to end up doing is driving us into the arms of the Sierra Pacific Power Company, because they're the only other ones with that kind of money to get the development work done. But we don't want to do that. We want to develop our farm, we want your help in developing our farm, we want to be a good part of this entire basin's community and we ask your help in that connection. I thank you. If you have any questions I would be delighted to answer them."

III.

By Order No. 849, the State Engineer designated and described the Honey Lake Ground Water Basin under the provisions of NRS 534.030 as a basin in need of additional administration.⁴

FINDINGS OF FACT

I.

An administrative hearing in the matter of the subject applications to change was held before the State Engineer on April 2, 1986. The protestant, County of Lassen, California, testified that the grounds of the protest represented the protestants position and further offered Protestant's Exhibit "A" titled "Water Budget Honey Lake Water Basin" dated January 1986 in support of the protests.⁵

The referenced report represents that the perennial yield of the entire Honey Lake Ground Water Basin is at least 69,000 acre-feet per year; 53,000 of which occurs on the California side and the remaining 16,000 acre-feet within the confines of Nevada. The report notes that an imbalance of 14,000 acre-feet exists between the estimated average annual ground water consumption and the estimated perennial yield. The report further concludes that available records show no significant long-term change in storage in the Honey Lake Ground Water Basin and establishes various hypothesis which generally contend that the perennial yield may be greater than the 69,000 acre-feet per year estimate.⁶

In addition, Protestants' Exhibit "A" represents that California is presently pumping at a rate equivalent to the perennial yield of the basin within California.⁶ Testimony presented at the hearing further established that California presently pumps water at a yearly rate in excess of the estimated perennial yield of 53,000 acre-feet annually within the California portion of the Honey Lake Ground Water Basin.⁷

⁴ See Order No. 849, public record in the office of the State Engineer.

⁵ See hearing record of April 2, 1986, public administrative hearing, pp. 10 and 16, public record in the office of the State Engineer.

⁶ Report titled "Water Budget Honey Lake Water Basin", January 1986.

⁷ See hearing record of April 2, 1986, public administrative hearing, pp. 14-15, public record in the office of the State Engineer.

II.

Testimony and evidence was not presented at the hearing substantiating the grounds of the protests. In fact, the report submitted as Protestant's Exhibit "A" seemingly refutes the grounds of the protest, that the granting of the applications to change existing rights would "overdraft the Nevada portion of the Honey Lake groundwater basin by 100% of its annual recharge". The report represents that Nevada's commitment in terms of existing ground water rights is approximately 23,778 acre-feet per year compared to an estimated perennial yield on the Nevada side of 16,000 acre-feet per year. The perennial yield estimate, as an example, does not include recharge resulting from secondary recharge of irrigation water and is conjectured to be lower than the recharge actually experienced.⁸

III.

In addition to the grounds of the protests common to all the applications, the protest to Applications 49373 and 49379 purports that the granting of Applications 49369, 49373 and 49379, which propose to change Permit 38543, would result in an increased diversion rate from the 4.0 c.f.s. allowed under Permit 38543. Application 49369 was filed to change 1.0 c.f.s., Application 49373 to change 1.5 c.f.s. and Application 49379 to change 1.5 c.f.s. of water heretofore appropriated under Permit 38543. The granting of the subject applications would result in the total abrogation of Permit 38543 and would not increase the diversion rate previously permitted.¹

IV.

With the exception of Applications 49378 and 49379 which propose to change the place of use only, the subject applications propose to change the points of diversion of existing rights in the Honey Lake Valley Ground Water Basin to points further east of the California border resulting in less of a possibility of interference with wells located in California. Further, the changes would result in points of diversion at a greater distance from the nearest existing rights in the Nevada portion of the ground water basin.⁹

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.¹⁰

⁸ See hearing record of April 2, 1986, public administrative hearing, public record in the office of the State Engineer.

⁹ See Applications 49268, 49269, 49373, 49374, 49375, 49376, 49377, 49378 and 49379 and supporting maps, public record in the office of the State Engineer.

¹⁰ NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:¹¹

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

III.

The granting of Applications to change 49268, 49269, 49373, 49374, 49375, 49376, 49377, 49378 and 49379 will not result in an additional appropriation of water within the Honey Lake Valley Ground Water Basin nor in any increased diversion rate than previously permitted under the base permits.

IV.

Applications 49268, 49269, 49373, 49374, 49375, 49376 and 49377 propose to change the points of diversion and places of use of existing rights which will result in the points of diversion being located at a greater distance from existing wells in California and existing rights in Nevada. Therefore, the granting of the subject applications will not conflict with existing rights or be detrimental to the public welfare.

V.

No conclusive evidence was presented by the protestant in this matter to support their position that the granting of the subject applications would conflict with existing rights and prove detrimental to the public welfare.

RULING

The protest to the granting of Applications 49268, 49269, 49373, 49374, 49375, 49376, 49377, 49378 and 49379 is herewith overruled and permits will be granted under the subject applications subject to existing rights.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/CT/bl

Dated this 16th day of
April, 1986.

¹¹ NRS 533.370(3).