

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 48919,) 48920 AND 48921 FILED TO CHANGE THE) POINT OF DIVERSION, MANNER OF USE AND) PLACE OF USE OF THE WATERS OF AN) UNDERGROUND SOURCE HERETOFORE) APPROPRIATED UNDER PERMITS 47788,) 47791 AND 47792, RESPECTIVELY, IN THE) SPANISH SPRINGS VALLEY DESIGNATED) GROUND WATER BASIN, WASHOE COUNTY,) NEVADA.)

RULING

GENERAL

I.

Application 48919 was filed on March 15, 1985, by Spanish Springs Association to change the point of diversion, manner of use and place of use of 0.33 c.f.s. of water from an underground source heretofore appropriated under Permit 47788. The proposed use is for commercial and domestic purposes within the E1/2 NE1/4, S1/2 Section 15; portions of the SW1/4 Section 14; NW1/4, NE1/4 Section 23; and NE1/4 Section 22, T.21N., R.20E., M.D.B.&M. The proposed point of diversion is described as being within the SE1/4 NE1/4 Section 15, T.21N., R.20E., M.D.B.&M. The existing use is for quasi-municipal purposes within the E1/2 NE1/4 Section 4, that portion of Section 3 west of highway 445, T.20N., R.20E., M.D.B.&M.; Section 11; Section 13 except E1/2 NE1/4; E1/2 NE1/4, SE1/4 Section 15; E1/2 Section 22; Sections 27 and 34; and the following portions west of highway 445: Sections 14, 23, 26 and 35, T.21N., R.20E., M.D.B.&M. The existing point of diversion is described as being within the SW1/4 SW1/4 Section 13, T.21N., R.20E., M.D.B.&M.¹

Application 48920 was filed on March 15, 1985, by Spanish Springs Association to change the point of diversion, manner of use and place of use of 0.38 c.f.s. of water from an underground source heretofore appropriated under Permit 47791. The proposed use is for commercial and domestic purposes within the E1/2 NE1/4, S1/2 Section 15; portions of the SW1/4 Section 14; NW1/4, NE1/4 Section 23; and NE1/4 Section 22, T.21N., R.20E., M.D.B.&M. The proposed point of diversion is described as being within the SE1/4 NE1/4 Section 15, T.21N., R.20E., M.D.B.&M. The existing use is for quasi-municipal purposes within the E1/2 NE1/4 Section 4, that portion of Section 3 west of highway 445, T.20N., R.20E., M.D.B.&M.; Section 11; Section 13 except E1/2 NE1/4; E1/2 NE1/4, SE1/4 Section 15; E1/2 Section 22; Sections 27 and 34; and the following portions west of highway 445: Sections 14, 23, 26 and 35, T.21N., R.20E., M.D.B.&M. The existing point of diversion is described as being within the NE1/4 SW1/4 Section 3, T.20N., R.20E., M.D.B.&M.¹

¹ Public record in the office of the State Engineer.

Application 48921 was filed on March 15, 1985, by Spanish Springs Association to change the point of diversion, manner of use and place of use of 0.9 c.f.s. of water from an underground source heretofore appropriated under Permit 47792. The proposed use is for commercial and domestic purposes within the E1/2 NE1/4, S1/2 Section 15; portions of the SW1/4 Section 14; NW1/4, NE1/4 Section 23; and NE1/4 Section 22; T.21N., R.20E., M.D.B.&M. The proposed point of diversion is described as being within the SE1/4 NE1/4 Section 15, T.21N., R.20E., M.D.B.&M. The existing use is for quasi-municipal purposes within the E1/2 NE1/4 Section 4, that portion of Section 3 west of highway 445, T.20N., R.20E., M.D.B.&M.; Section 11; Section 13 except E1/2 NE1/4; E1/2 NE1/4, SE1/4 Section 15; E1/2 Section 22; Sections 27 and 34; and the following portions west of highway 445: Sections 14, 23, 26 and 35, T.21N., R.20E., M.D.B.&M. The existing point of diversion is described as being within the SE1/4 NE1/4 Section 15, T.21N., R.20E., M.D.B.&M. ¹

II.

Applications 48919, 48920 and 48921 were timely protested on June 12, 1985, by Richard T. Donovan on the grounds that:

"Permittee has not shown due diligence in perfecting previous appropriations, granting of these permits will adversely effect existing rights and be detrimental to the public interest, Spanish Springs Valley is over-appropriated and the proposed uses would remove water from the underground reservoir which would not be replaced, these permits are the latest in a long line of attempts to extend time by movement, not by true development. Permits call for excessive consumptive use."

Therefore protestant requests these applications be denied.¹

Applications 48919, 48920 and 48921 were timely protested on June 12, 1986, by L. David Kiley, David A. Kiley and Lazy Five Co. on the grounds that:

"Permittee has not shown due diligence in perfecting previous appropriations, granting of these permits will adversely effect existing rights and be detrimental to the public interest, Spanish Springs Valley is over-appropriated and the proposed uses would remove water from the underground reservoir which would not be replaced, these permits are the latest in a long line of attempts to extend time by movement, not true development."

Therefore protestant requests that these applications be denied.¹

Applications 48919, 48920 and 48921 became ready for action on June 14, 1985.¹

FINDINGS OF FACT

I.

By Order dated March 10, 1975, the State Engineer described and designated the Spanish Springs Valley Ground Water Basin as a ground water basin in need of additional administration under the provisions of NRS Chapter 534.²

II.

A public administrative hearing in the matter of the subject applications to change was held before the State Engineer on October 15, 1985, in Reno, Nevada, after proper notice was given to all interested parties. The applicants and protestants made evidentiary presentations and substantial testimony was received from experts and witnesses on behalf of the parties who had standing in this matter.³

Administrative notice was given to the previous public administrative hearing held before the State Engineer on December 17, 1980, in Reno, Nevada, in the matter of Applications 36052 through 36057 inclusive.³ Administrative notice was also given to the State Engineer's Ruling No. 2639 dated April 28, 1981.¹

III.

The chronological history of the current applications to change is as follows.

Application 29285 was filed on March 24, 1975, by First National Bank of Nevada to appropriate 0.33 c.f.s. of ground water for quasi-municipal purposes. A permit was issued on March 18, 1975, for 0.33 c.f.s. not to exceed 96.55 acre-feet annually.¹

Application 29288 was filed on March 24, 1975, by First National Bank of Nevada to appropriate 1.1 c.f.s. of ground water for quasi-municipal purposes. A permit was issued on March 18, 1975, for 1.1 c.f.s. not to exceed 319.08 acre-feet annually.¹

Application 29289 was filed on March 24, 1975, by First National Bank of Nevada to appropriate 0.9 c.f.s. of ground water for quasi-municipal purposes. A permit was issued on March 18, 1977, for 0.9 c.f.s. not to exceed 390.8 acre-feet annually.¹

The total combined duty of water under Permits 29284 through 29289 inclusive, is limited to 2,000 acre-feet per annum.¹

Permits 29285, 29288 and 29289 were transferred on May 26, 1977, to Spanish Springs Association on the records of the State Engineer's office.¹

² See State Engineer's Order No. 533, public record in the office of the State Engineer.

³ Transcript of the public administrative hearing on October 15, 1985, public record in the office of the State Engineer.

Application 36053 was filed on October 18, 1978, by Spanish Springs Association to change the point of diversion and place of use of 0.33 c.f.s. of water under Permit 29285. A permit was issued on August 31, 1981, for 0.33 c.f.s. not to exceed 96.55 acre-feet annually.¹

Application 36056 was filed on October 18, 1978, by Spanish Springs Association to change the point of diversion and place of use of 1.1 c.f.s. of water under Permit 29288. A permit was issued on August 31, 1981, for 0.38 c.f.s. not to exceed 108.53 acre-feet annually (portion remaining under Permit 29288 in the name of Spanish Springs Association).¹

Application 36057 was filed on October 18, 1978, by Spanish Springs Association to change the point of diversion and place of use of 0.90 c.f.s. of water under Permit 29289. A permit was issued August 31, 1981, for 0.90 c.f.s. not to exceed 390.8 acre-feet annually.¹

The total combined duty of water under Permits 36052 through 36057, inclusive, is limited to 1789.45 acre-feet per annum.¹

Application 47788 was filed on March 13, 1984, by Spanish Springs Association to change the place of use of 0.33 c.f.s. of water under Permit 36053. A permit was issued on September 17, 1984, for 0.33 c.f.s. not to exceed 96.55 acre-feet annually.¹

Application 47791 was filed on March 13, 1984, by Spanish Springs Association to change the place of use of 1.1 c.f.s. of water under Permit 36056. A permit was issued on September 17, 1984, for 0.38 c.f.s. not to exceed 108.53 acre-feet annually.¹

Application 47792 was filed on March 13, 1984, by Spanish Springs Association to change the place of use of 0.9 c.f.s. of water under Permit 36057. A permit was issued on September 17, 1984, for 0.9 c.f.s. not to exceed 390.8 acre-feet annually.¹

The total combined duty of water under Permits 47788 through 47798, inclusive, is limited to 1789.45 acre-feet per annum.¹

IV.

The closest permitted well of either protestant to the proposed points of diversion under Applications 48919, 48920 and 48921 is Permit 30153 in the name of Richard T. and Ruth H. Donovan. The proposed points of diversion under said applications represent the same well site which is located approximately 7,425 feet to the northwest from the well under Permit 30153 located within the SE1/4 NE1/4 Section 23, T.21N., R.20E., M.D.B.&M.⁴

⁴ Determined by staff of Division of Water Resources from maps filed in support of Applications 48919, 48920, 48921 and Permit 30153. Public record in the office of the State Engineer.

V.

State Engineer's Ruling No. 2639 noted that testimony given during the December 17, 1980, hearing established that the proposed points of diversion under protested Applications to Change 36052 through 36057, inclusive, were located no closer than approximately one and one-half miles from protestant Donovan's existing rights and about one mile from protestant Kiley's existing rights.¹

VI.

The subject of "due diligence" has been addressed by the Nevada Supreme Court in Ophir Silver Mining Company v. Carpenter, January 1869, 3-4 Nevada, 946, wherein Chief Justice Lewis noted that diligence is defined:

"to be the 'steady application to business of any kind, constant effort to accomplish any undertaking'. The law does not require any unusual or extraordinary efforts, but only that which is usual, ordinary, and reasonable. The diligence required in cases of this kind is that constancy or steadiness of purpose or labor which is usual with men engaged in like enterprises, and who desire a speedy accomplishment of their designs. Such assiduity in the prosecution of the enterprise as will manifest to the world a *bona fide* (ital.) intention to complete it within a reasonable time. It is the doing of an act, or series of acts, with all practical expedition, with no delay, except such as may be incident to the work itself."⁵

VII.

During the hearing of October 15, 1985, the applicants presented testimony as to their collective, diligent efforts to place the water rights represented by the subject base right permits to a quasi-municipal beneficial use. Testimony was also presented as to the associated extensive requirements and difficulties encountered in complying with the policies and regulations of the various governmental agencies and with the prevailing economic conditions affecting their development pursuits. Applicants also presented testimony as to the extent of their business and financial preparations to proceed with placing the water rights under the subject applications to change to a commercial asphalt plant beneficial use.³

Protestant's testimony consisted of numerous exhibits entered into evidence and referred to in a prepared statement which expounded on the points of their protests. Protestants did not, however, produce any evidence to support the grounds stated in either the protests or the prepared statements given as testimony.³

⁵ See also 4 Nevada, 534

VIII.

The State Engineer may approve an application to change which contemplates:

- (1) The application of the water to a beneficial use,
- (2) There is unappropriated water in the proposed source,
- (3) The proposed use or change will not impair existing rights, and
- (4) The proposed use or change is in the public interest.⁶

CONCLUSIONS

I.

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

II.

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

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use or change conflicts with existing rights, or
- C. The proposed use or change threatens to prove detrimental to the public interest.

III.

NRS 533.380(3) states that except as provided in subsection 4, the State Engineer may, for good cause shown, extend the time within which the diversion works must be completed, or water must be applied to a beneficial use. Based on the record of evidence and testimony the State Engineer concludes that the applicants have proceeded in good faith and shown reasonable diligence although marginal at times in complying with the terms of their permits in placing the water to beneficial use during the period from December 17, 1980, to the present.

⁶ NRS 533.030(1), 533.370(3).

⁷ NRS Chapters 533 and 534.

⁸ NRS 533.370(3).

IV.

Since the subject applications are, in fact, applications to change existing permitted rights and are not requests for additional appropriation, the question of unappropriated water at the proposed source is not at issue. Based on information available in the office of the State Engineer and the testimony given during the hearings of December 17, 1980, and October 15, 1985, there is no indication that the granting of Applications 48919, 48920 and 48921 would cause a significant adverse effect on any of protestants' wells nor would the proposed use threaten to prove detrimental to the public welfare.

RULING

The protests to Applications 48919, 48920 and 48921 are hereby overruled and Applications 48919, 48920 and 48921 are herewith granted on the grounds that the granting thereof will not conflict with existing rights nor be otherwise detrimental to the public welfare. The applications to change will be granted subject to the condition that the proofs of beneficial use shall be filed on or before a period of one and one-half years from the date said permits are issued, regardless of any applications to change or transfers of ownership filed on these permits, and also with the provision that no further extensions of time will be granted towards submitting the proofs of beneficial use.

Respectfully Submitted,



PETER G. MORROS
State Engineer

PGM/SHF/jjk

Dated this 22 day of
September, 1986.