

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

IN THE MATTER OF APPLICATIONS 50087,)
50088, 50089, 50090, 53326, 53888,)
53889, 53890, 53891, AND 53892 FILED)
TO CHANGE THE POINT OF DIVERSION AND)
PLACE OF USE OF THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE IN THE HONEY)
LAKE GROUNDWATER BASIN, WASHOE COUNTY,))
NEVADA, HERETOFORE APPROPRIATED UNDER)
PERMITS 38546, 38547, 38545, 38544,)
31200, 43306, 36821, 31177, 36821 AND)
43306 RESPECTIVELY.)

RULING
#3786

GENERAL

I.

Application 50087 was filed on August 18, 1986 by Fish Springs Ranch, Ltd. requesting permission to change the point of diversion and the place of use of the public waters of the State of Nevada heretofore appropriated from an underground source in the Honey Lake Valley Ground Water Basin under Permit 38546.¹

Application 50088 was filed on August 18, 1986 by Fish Springs Ranch, Ltd. requesting permission to change the point of diversion and the place of use of the public waters of the State of Nevada heretofore appropriated from an underground source in the Honey Lake Valley Ground Water Basin under Permit 38547.¹

Application 50089 was filed on August 18, 1986 by Fish Springs Ranch, Ltd. requesting permission to change the point of diversion and the place of use of the public waters of the State of Nevada heretofore appropriated from an underground source in the Honey Lake Valley Ground Water Basin under Permit 38545.¹

Application 50090 was filed on August 18, 1986 by Fish Springs Ranch, Ltd. requesting permission to change the point of diversion and the place of use of the public waters of the State

¹ Public record in the office of the State Engineer.

of Nevada heretofore appropriated from an underground source in the Honey Lake Valley Ground Water Basin under Permit 38544.¹

II.

Applications 50087 through 50090; inclusive, were timely protested by the County of Lassen, California, for the following reasons and on the following grounds; to wit:¹

Applications 50087 through 50090; inclusive, request to change P.O.D.s and P.O.U.s of 38544 through ~~38547~~^{PA 3/5/91}; inclusive for which it will be an impossibility to file a PBU and Cultural map on or prior to January 23, 1987 when due because the required crop activity is not evident. Therefore Lassen County is concerned that granting 50087 through 50090; inclusive, will extend the time frame of 38544 through ~~38547~~^{PA 3/6/91}; inclusive, which would create additional uncertainty for potential industrial and agricultural users in the Honey Lake Basin, inhibit and confuse future basin growth and development options, and increase costs to Lassen County.

2. Granting the changes of diversion points and places of use implies further PBU and cultural map extensions which would increase the potential for impairment of existing rights in California by increasing extractions in Nevada. The increased overdraft and underflow from 50087, 50088, 50089 and 50090 could impair existing beneficial uses in California by depleting California's resources and induce further groundwater quality degradation.

3. In the opinion of the Public Service Commission of Nevada dated May 12, 1986 (Docket 84-1006), one of Sierra Pacific Power Co.'s "top priorities" for providing long-range supplementary water supply to the Reno metro area would be by means of importation of groundwater from western Nevada groundwater basins

(alternative #17).

Bearing in mind the PSC's opinion as to the appropriate method to supplement the water needs of Reno, it appears likely that the subject water will eventually be used for municipal and industrial purposes (possibly in conjunction with any water resources developed pursuant to the 52 applications made recently by Washoe County and 21 applications made by the City of Sparks and Washoe County).

4. Franklin D. Jeans has approached and is having discussions with both major Reno area water purveyors, Sierra Pacific Power Company and Washoe County Utilities. This is inconsistent with Mr. Jean's October 15, 1985 statement to the Lassen County Board of Supervisors (attached). Export from the Honey Lake Basin to Reno creates the potential for even further overdraft.

5. Nevada's groundwater extractions in the Honey Lake Basin should not exceed Nevada's recharge, and deliberation by the State Engineer on 50087, 50088, 50089 and 50090 or any other proposals to further develop groundwater resources in the Honey Lake Groundwater Basin should be deferred until the USGS study is completed and considered concurrently with all other pending applications to ensure that overdraft does not occur.

6. The Nevada State Engineer's Office should update its inventory of the use under existing permits issued to Fish Springs Ranch and other permits within the Honey Lake Groundwater Basin to establish the current volume of groundwater extraction prior to approving additional applications because of the obvious potential for use in Reno-Stead of all of the water permitted. This is a much different situation than the typical ag-water over appropriated Nevada groundwater

basin with its high percentage of permittees never showing beneficial use.

7. Lassen's further concerns are as follows:

a. There is inconclusive evidence that the granting of the subject permits would not be detrimental to groundwater aquifers. This lack of information points out the need for a USGS study which is supported by the California Department of Water Resources, Nevada State Engineer and Sierra Pacific Power Co..

b. By allowing optimization of existing permits, Nevada could allow the extraction of water in excess of their estimate of groundwater recharge.

c. The 12 month irrigation season applied for under 50087, 50088, 50089 and 50090 which is not the case at Honey Lake.

d. 50087, 88, 89, 90 proposed place of use (7) tallies 1080 acres but states a total of 861 acres. Remarks (15) tends to clarify the total permitted acreage to be 861 acres per 38544, 45, 46, 47, however, "not to exceed" would be preferable.

III.

Application 53888 was filed on September 25, 1989 by Northwest Nevada Water Resources Limited Partnership requesting permission to change the point of diversion and the place of use of a portion of the public waters of the State of Nevada heretofore appropriated from an underground source in the Honey Lake Valley Ground Water Basin under Permit 43306.¹

Application 53889 was filed on September 25, 1989 by Northwest Nevada Water Resources Limited Partnership requesting permission to change the point of diversion and the place of use of a portion of the public waters of the State of Nevada heretofore appropriated from an underground source in the Honey Lake Valley Ground Water Basin under Permit 36821.¹

Application 53890 was filed on September 25, 1989 by Northwest Nevada Water Resources Limited Partnership requesting permission to change the point of diversion and the place of use of a portion of the public waters of the State of Nevada heretofore appropriated from an underground source in the Honey Lake Valley Ground Water Basin under Permit 31177.¹

Application 53891 was filed on September 25, 1989 by Northwest Nevada Water Resources Limited Partnership requesting permission to change the point of diversion and the place of use of a portion of the public waters of the State of Nevada heretofore appropriated from an underground source in the Honey Lake Valley Ground Water Basin under Permit 36821.¹

Application 53892 was filed on September 25, 1989 by Northwest Nevada Water Resources Limited Partnership requesting permission to change the point of diversion and the place of use of a portion of the public waters of the State of Nevada heretofore appropriated from an underground source in the Honey Lake Valley Ground Water Basin under Permit 43306.¹

IV.

Applications 53888 through 53892; inclusive were published for the statutory period and subsequently no protests were filed.¹

V.

Application 53326 was filed on May 30, 1989 by Northwest Nevada Water Resources Limited Partnership requesting permission to change the point of diversion and the place of use of the public waters of the State of Nevada heretofore appropriated from an underground source in the Honey Lake Valley Ground Water Basin under Permit 31200.¹

VI.

Application 53326 was timely protested by the Sierra Army Depot for the following reason, and on the following grounds; to wit:¹

"Application 53,326 requests to change point of diversion (POD) of permit 31,200 for 1.9 c.f.s. of underground water. Application 53,326 claims that the relocated point of diversion for the existing 1.9 c.f.s. permitted under 31,200 will be used to irrigate 110 acres of land. On 23 June 1989, Washoe County filed application 53,419 which requests to change the type of use and point of use (POU) of the 1.9 c.f.s. of underground water associated with application 53,326 and permit 31,200. As a result of the filing of 53,419, it is clear that 53,326 is associated with the effort to export Honey Lake Valley groundwater out of the basin not to relocate 1.9 c.f.s. of groundwater to irrigate 110 acres of land as the application implies. Sierra Army Depot considers 53,326 to be part of application based on the following points.

1. Nevada's groundwater extractions in the Honey Lake Basin should not exceed Nevada's recharge, and deliberation by the State Engineer on 53,326 or any other proposal to further develop groundwater resources in the Honey Lake Groundwater Basin should be deferred until the U.S.G.S. study is completed and considered concurrently with all other pending applications to ensure that overdraft does not occur.

2. Sierra Army Depot's potable wells are located no less than 8.5 miles from the western edge of the proposed municipal water well field. Pumpage and export of groundwater on the Nevada side of the Honey Lake Valley in excess of the amount of recharge attributable to waters incident upon the Nevada side of the basin could impact the quality of the water in depot potable wells. There exists to the northwest of these potable wells a large body of non-potable groundwater. The proposed municipal water well field is located generally to the southeast of the potable

wells. It is likely that the level of extraction that would occur if all of the applications are approved would be of such magnitude as to cause the southeastern migration of the non-potable waters to the area where depot wells are located. This installation has shown beneficial use of the potable groundwater resource for over 40 years. If the quality of the water drops, the entire potable water supply would be lost and the depot would cease to function.

3. The mission at Sierra Army Depot is of a strategic nature and disruption of depot activities could seriously impair the ability of the U.S. Army to support the defense of the United States of America.

4. Much of the surface of Sierra Army Depot is fine grained materials. In the southern portion of the depot, the predominant surface soil is referred to as "blow sand" and the middle and northern lands (except Skedaddle Mountain) are silts from the old lake bottom (alkaline). On 11 July 1989 in Carson City, Nevada, the U.S.G.S. released preliminary findings of the study they have been conducting on the Honey Lake Basin. Under the scenario of 15,000 acre ft/year of exportation out of the basin, very little groundwater will remain to support evapotranspiration, 9% instead of the 42% which is available today. This along with the predicted drop in the static groundwater elevation would eliminate most of the vegetation on the installation. The loss of the vegetation would allow for the sand dunes to migrate and the silts to contaminate the air. A significant loss in air quality would result. The loss of our vegetative cover due to overdrafting of the groundwater resource is not acceptable.

5. The predicted drop in the static groundwater elevation at 15,000 acre ft per year of exportation was

shown by the U.S.G.S. to have a possible impact of up to 100 ft in the area associated with our potable wells. The resulting loss in production would require that the Army construct at least one new well to support our current demands. As it stands today during peak demand periods, depot wells can barely maintain sufficient production.

6. Sierra Army Depot respectfully requests that the permitting of the domestic water well field be deferred until the following things occur.

a. The completion of the U.S.G.S. study that is currently underway.

b. The development of a Honey Lake Valley Groundwater Management District on the California side.

c. Agreement between the Nevada State Engineer, the State of California, and Lassen County, as to a "safe yield" for exportation of groundwaters out of the basin. Safe yield being that amount of extraction that does not adversely impact the quality of our well water, the production capacity of our wells, and the surface vegetation on the Sierra Army Depot.

d. A bi-state study of the water quality and potential impacts of exportation on that quality much like the U.S.G.S. study that is currently underway for water quantity.

VII.

Application 53326 was timely protested by the Pyramid Lake Paiute Tribe of Indians for the following reasons and on the following grounds, to wit:¹

"1. Application Number 53326 is deficient and should be denied. On information and belief the alleged water right has not been exercised, utilized or perfected in accordance with state law and therefore cannot be

changed to a different place of use or manner of use. The proper course and procedure is to seek to amend the application or the permit for the alleged existing right.

2. Granting or approving Application Number 53326 would threaten to prove detrimental to the public interest if the implementation of the Honey Lake Water Importation Project is not coordinated and integrated with the outcome of the Truckee River Settlement negotiations and the implementation of the May 23, 1989 Preliminary Settlement Agreement between the Pyramid Lake Paiute Tribe and the Sierra Pacific Power Company.

3. Granting or approving Application Number 53326 along with other pending applications involving the utilization of groundwater from the Honey Lake Basin in Nevada would exceed the safe yield of the Basin and result in the permanent depletion or mining of groundwater resources in violation of Nevada law.

4. There is not sufficient unappropriated groundwater in the Honey Lake Basin in Nevada to provide the water sought in Application Number 53326 and all other pending applications involving the utilization of surface and groundwater from that Basin.

5. Granting or approving Application Number 53326 would conflict with the prior and paramount reserved water rights of the Pyramid Lake Paiute Tribe to the groundwater underlying the Smoke Creek Desert portion of the Pyramid Lake Indian Reservation.

VIII.

All protestants requested the State Engineer to deny the subject applications.¹

FINDINGS OF FACT

I.

After all of the subject parties had been duly notified as required under NRS 533.365(3), a series of administrative hearings were held before the State Engineer beginning on June 21, 1990.² The purpose of the hearings was to receive evidence and testimony relevant to the proposed intra-basin change applications, in addition to numerous applications seeking to change the places of use to areas outside of the Honey Lake Groundwater Basin. Four applications requesting new appropriations of water within the basin were also considered as were the respective protests to the aforementioned applications.³ Evidentiary presentations were made by both applicant and protestants and numerous exhibits were received in evidence.

II.

The extensive nature of the evidence and testimony presented during the hearing necessitated its continuance to July 19, 1990⁴ and September 10, 1990.⁵

III.

The protestants indicated during the initial stages of the hearing that they would not present a separate case to support their protests to the Intra-Basin Change Applications, but would pursue that issue during the examination of the Inter-Basin Transfers.⁶

² Transcripts of the administrative hearings before the State Engineer are public record in the office of the State Engineer in Carson City, Nevada.

³ State's Exhibit 1.

⁴ Transcript June 21, 1990, pg. 368.

⁵ Transcript of July 24, 1990, pg. 1389.

⁶ Transcript of June 21, 1990, pgs. 88 and 89.

IV.

Nevada Revised Statutes carry no provisions which would prohibit the transfer of valid, permitted water rights based solely upon the unperfected nature of said rights.⁷

V.

The places of use and the points of diversion for the existing permits and their respective change applications, all lie within the boundaries of the Honey Lake Ground Water Basin.⁸

VI.

The State Engineer finds that permits have been approved for 5004 acre-feet annually of ground water within the Honey Lake Ground Water Basin under the existing rights sought to be changed by applications 50087, 50088, 50089, 50090, 53326, 53888, 53889, 53890, 53891 and 53892.⁹

VII.

The State Engineer finds no evidence that approval of the subject change applications would adversely effect existing rights. All of the evidence and testimony received during twelve days of hearings was directed toward the export of water from Honey Lake Basin rather than pumping from one portion of the basin as opposed to another portion.

VIII.

The State Engineer finds no evidence that approval of the subject change applications would be detrimental to the public interest.

⁷ Nevada Revised Statutes, Chapters 534 to 538; inclusive.

⁸ State's Exhibit 3.

⁹ Public record in the office of the State Engineer.

CONCLUSIONS

I.

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

II.

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

1. The proposed change conflicts with existing rights, or
2. The proposed change threatens to prove detrimental to the public interest.

III.

Since the subject applications are applications to change existing permitted rights and are not requests for additional appropriations, the question of unappropriated water at the proposed source is not an issue.

IV.

The record does not reflect any evidence that the proposed points of diversion of water under Applications 50087 through 50090; inclusive, Application 53326, and Applications 53888 through 53892; inclusive, will conflict with existing water rights or threaten to prove detrimental to the public interest.

V.

The change in point of diversion, place or manner of use of unperfected rights is not prohibited by the statutory or case law in Nevada.

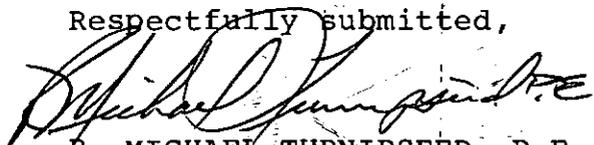
¹⁰ NRS Chapter 533.

¹¹ NRS Chapter 533.370.

RULING

The protests to Applications 50087, 50088, 50089, 50090 and 53326 hereby are overruled. Applications 50087, 50088, 50089, 50090 and 53326 together with Applications 53888, 53889, 53890, 53891 and 53892 are hereby approved subject to prior rights and payment of statutory permit fees.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 1st day of
 March , 1991