

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 52288 and)
52289 FILED TO CHANGE THE POINT OF)
DIVERSION OF A PORTION OF THE WATERS)
OF AN UNDERGROUND SOURCE)
HERETOFORE APPROPRIATED UNDER)
PERMITS 36253 AND 36252, RESPECTIVELY)
IN THE CARSON VALLEY DESIGNATED)
GROUNDWATER BASIN, DOUGLAS COUNTY,)
NEVADA.)

RULING

GENERAL

I.

Application 52288 was filed on July 5, 1988, by the Douglas County School District to change the point of diversion of 0.73 c.f.s., a portion of water from an underground source heretofore appropriated under Permit 36253. The proposed use is for quasi-municipal and domestic purposes within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12, T.14N., R.19E., M.D.B.&M. The proposed point of diversion is described as being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, T.14N., R.19E., M.D.B.&M. The existing point of diversion is described as being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, T.14N., R.19E., M.D.B.&M.¹

Application 52289 was filed on July 5, 1988, by the Douglas County School District to change the point of diversion of 0.73 c.f.s., a portion of water from an underground source heretofore appropriated under Permit 36252. The proposed use is for quasi-municipal and domestic purposes within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12, T.14N., R.19E., M.D.B.&M. The proposed point of diversion is described as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 12, T.14N., R.19E., M.D.B.&M. The existing point of diversion is described as being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, T.14N., R.19E., M.D.B.&M.¹

II.

Applications 52288 and 52289 were timely protested on September 6, 1988, by the Residents of Valley View Subdivision, Unit No. 2 on the grounds that:

¹ Public record in the office of the State Engineer.

"The proposed change is to preserve water for future uses in which the School District cannot now place to beneficial use with due diligence. When the necessity for the use of water does not exist, the right to divert it ceases. The base rights were issued in excess of 5 years prior and that portion not beneficially used becomes subject to the provisions of NRS 534.090(1) to the extent of the nonuse. Permits were issued previously for existing uses only (See Ruling dated 9/29/81)."

Therefore the Protestants request that the applications be denied.¹

Applications 52288 and 52289 were timely protested by the Indian Hills General Improvement District on September 20, 1988, on the grounds that:

"Indian Hills G.I.D. is the local entity supplying both water and sewerage for the area. The school lies within the legal service boundaries of the Improvement District and is presently being served by the Improvement District. Therefore, it is requested prior to a permit being issued, the applicant dedicates the rights to Indian Hills G.I.D.. Without this, we feel this application would conflict with existing rights."

Therefore the Protestants request that the applications be conditionally approved or denied.¹

Applications 52288 and 52289 became ready for action on October 22, 1988.¹

FINDINGS OF FACT

I.

On June 14, 1977, the State Engineer described and designated the Carson Valley Groundwater Basin under the provisions of NRS Chapter 534.²

² See State Engineer's Order No. 684, public record in the office of the State Engineer.

II.

On August 14, 1985, the State Engineer described and designated a portion of the Johnson Lane/Douglas County Airport area, within the Carson Valley Groundwater Basin, as being a curtailment area, under the provisions of NRS Chapter 534, regarding future appropriations and applications to change outlying existing points of diversion to new locations within the curtailment area.³ The proposed points of diversion described under Applications 52288 and 52289 are not located within the designated curtailment area.¹

III.

The proposed points of diversion described under Applications 52288 and 52289 are the same as the existing points of diversion under Permits 42548 and 42549, respectively.¹

IV.

Applications 42548 and 42549 were filed by the Douglas County School District to change the point of diversion of 1.0 c.f.s. and 32.85 million gallons annually (MGA) under Permits 36253 and 36252, respectively. The current owner of record of Permits 42548 and 42549 is the Indian Hills General Improvement District (I.H.G.I.D.).¹

Permits 36252 and 36253 were issued in the name of Douglas County School District for 1.0 c.f.s. respectively, with a total combined duty of 32.85 MGA for quasi-municipal purposes.¹

V.

Applications 42548 and 42549 were the subject of a formal field investigation conducted on September 16, 1981, in response to the timely filed protests by the "Residents of Valley View Subdivision, Unit No. 2".⁴

The proposed points of diversion described under Applications 42548 and 42549 were located closer to the domestic wells within the Valley View Unit No. 2 subdivision than were the points of diversion specified under Permits 36252 and 36253.⁴

³ See State Engineer's Order No. 904, public record in the office of the State Engineer.

⁴ See Field Investigation Report No. 707 dated September 28, 1981, public record in the office of the State Engineer.

VI.

Based upon the findings in the Field Investigation Report, and other records and information available to the office of the State Engineer, the State Engineer determined that to allow the diversion of 32.85 MGA from the proposed points of diversion under Applications 42548 and 42549 to serve not only the school but the Indian Hills General Improvement District as well would conflict with existing rights and be detrimental to the public welfare.⁵ (emphasis added.)

However, the granting of Applications 42548 and 42549 for the amount required to serve the existing school would not cause an unreasonable lowering of groundwater levels. Therefore, the protests to Applications 42548 and 42549 were overruled by the State Engineer and permits were issued for 0.27 c.f.s. respectively, with a total combined duty of 7.29 MGA.⁵

VII.

Applications 52288 and 52289 were filed to change the remaining water rights under Permits 36253 and 36252, respectively, being 0.73 c.f.s. each with a total combined duty of 25.56 MGA, to the existing well sites covered by Permits 42548 and 42549, respectively.¹

VIII.

A public administrative hearing in the matter of the protested Applications 52288 and 52289 was held before the State Engineer on March 6, 1989, in Minden, Nevada, after proper notice was given to all interested parties.⁶ The applicant and protestants made evidentiary presentations and substantial testimony was received from witnesses on behalf of the parties who had standing in this matter.⁷

⁵ See State Engineer's Ruling No. 2719 dated September 29, 1981, public record in the office of the State Engineer.

⁶ NRS 533.365 (3) and (4).

⁷ See transcript of the public administrative hearing held on March 6, 1989, public record in the office of the State Engineer. Hereinafter referred to as "transcript".

Administrative notice was given to all records and information available in the office of the State Engineer, in addition to those records entered specifically as State's Exhibits for the hearing record.⁸

IX.

The Indian Hills General Improvement District's representative testified that the wells and pumps described by the points of diversion under Permits 42548 and 42549, and also the proposed points of diversion under Applications 52288 and 52289, are owned and operated by the I.H.G.I.D. The water from the wells is pumped to a storage tank, which is partially owned by the I.H.G.I.D. The storage tank is currently capable of only serving water to the School District property and is not connected with any water lines presently serving the I.H.G.I.D. water service area. The representative also emphasized that the I.H.G.I.D. requests that Applications 52288 and 52289 be issued permits on the condition that the applicant transfer ownership of said applications to the I.H.G.I.D., or otherwise be denied as per their protest.⁹

X.

Testimony received from the Douglas County School District's representative acknowledged that records provided by the I.H.G.I.D. estimated a 1988 consumption of 18.0 million gallons of water from the subject wells.¹⁰ This pumpage substantially exceeded the permitted amount of 7.29 MGA granted under Permits 42548 and 42549.¹ Evidence disclosed that the water is currently being served to the Jack's Valley Elementary School with an enrollment of 608 students, including irrigation of approximately 9 acres of grass area. Projected needs of the Douglas County School District include 18.35 MGA for an expanded elementary school, 23.84 MGA for a new middle school and 52.35 MGA for a new high school, for a total water requirement of 94.54 MGA.¹¹

According to both a separate pumpage document, and correspondence dated October 10, 1988, received from the I.H.G.I.D., covering the period from October 1985 to September 1988, the Douglas County School District consumptively used 15.08 MGA

⁸ See transcript, p. 8.

⁹ See transcript, pp. 11-19, inclusive.

¹⁰ See transcript, p. 54.

¹¹ See transcript, Applicant's Exhibit #2.

(46.29 AFA) in 1986, 15.74 MGA (48.29 AFA) in 1987 and 14.19 MGA (43.56 AFA) during January - September 1988 for the Jack's Valley Elementary School.¹ Additional information provided by the I.H.G.I.D. indicates that the elementary school consumptively used approximately 16.53 MGA (50.73 AFA) in 1988.¹²

XI.

Evidence disclosed various water level measurement data for several wells located in the nearby vicinity of the proposed points of diversion under Applications 52288 and 52289 within the Valley View groundwater sub-basin.¹³

Protestant's evidence represented data for one domestic well referred to as the "Plume" well¹⁴ located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 12, T.14N., R.19E., M.D.B.&M., and is approximately 1,650 and 1,400 feet distant North East from the proposed points of diversion under Applications 52288 and 52289, respectively.¹⁵

Applicant's evidence represented data for 5 different domestic wells drilled on Lots 42, 43, 45, 47 and 48 of the Valley View Unit No. 2 subdivision, located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 12, T.14N., R.19E., M.D.B.&M. The closest well is approximately 460 feet and the farthest well is approximately 710 feet distant due east from the closest proposed point of diversion under Application 52289, or the North well.¹⁶

XII.

Based upon the water level measurement data for the "Plume" well and the other 5 domestic wells, the following information was extracted:¹⁷

¹² Telecon on March 14, 1989, with the I.H.G.I.D. office representative.

¹³ See transcript, Protestant's Exhibit #'s 1 and 2, and Applicant's Exhibit #3.

¹⁴ See transcript, Protestant's Exhibit #1, p. 4, and #2.

¹⁵ Data determined by staff in the office of the State Engineer. See transcript, Protestant's Exhibit #1, U.S.G.S. Genoa Quadrangle Map.

¹⁶ See transcript, Applicant's Exhibit #3, Plate 1.

¹⁷ See transcript, Protestant's Exhibit #2 and Applicant's Exhibit #3, Sheets 1, 2 and 3.

<u>Well</u>	<u>Static Water Level (Feet)</u>	<u>Completion Date</u>	<u>Water Level Depth (Feet)</u>	<u>Measurement Date</u>	<u>Minimum Water Level Depth (Feet)</u>	<u>Measurement Date</u>	<u>Maximum Water Level Depth (Feet)</u>	<u>Measurement Date</u>
Lot 42	Note 1	Note 1	Note 2	Note 2	38.08	2-10-88	*63.00	6-29-87
			-	-	40.31	1-5-89	*70.93	6-14-88
Lot 43	40	10-12-76	57.7	10-11-87	36.92	2-10-88	58.50	7-14-87
			56.9	10-14-88	39.46	1-5-89	61.54	7-5-88
Lot 45	40	12-31-87	39.54	12-2-88	38.97	12-23-88	68.50	8-9-88
Lot 47	50	8-30-87	40.72	8-29-88	30.32	11-3-88	41.94	7-28-88
Lot 48	28	1-22-73	35.81	1-10-88	35.81	1-10-88	*66.40	6-29-87
			38.10	1-25-89	34.79	11-3-88	*71.70	6-14-88
Plume	35 ¹⁸	3-26-75 ¹⁸	34.98	3-27-81	34.98	3-27-81	61.80	9-20-81
			37.33	3-18-82	34.99	2-19-82	67.63	8-18-82
			34.58	2-24-83	34.58	2-24-83	58.28	7-12-83
			33.99	3-11-86	35.59	1-18-85	Note 3	Note 3
			33.47	3-9-87	33.99	3-11-86	69.83	8-16-86
			35.20	3-8-88	33.47	3-9-87	61.59	8-18-87
			-	-	35.20	3-8-88	56.94	9-19-88

Note 1: No well log available.

Note 2: No comparison possible due to Note 1.

Note 3: No summer month measurement recorded.

* Well in use - pump activated during measurement.

XIII.

Applicant's evidence disclosed that the maximum water level depth readings for the wells on Lots 42 and 48 were influenced by the fact that their well pumps were operating during those measurements.¹⁹ The average Summer static water levels during the periods July 7 - September 29, 1987 and July 5 - September 25, 1988 for these wells

¹⁸ Well Log No. 14668 filed April 14, 1975, public record in the office of the State Engineer.

¹⁹ See Findings of Fact XII., * footnote and indicated measurements. SEE also transcript, Applicants Exhibit #3, Sheets 1 and 2.

(without their pumps operating) were calculated to be the following:²⁰

	<u>Lot 42</u>	<u>Lot 48</u>
1987	58.17 feet	53.00 feet
1988	62.98 feet	54.55 feet

In addition, the maximum static water level depth readings for the above wells are as follows:²¹

	<u>Lot 42</u>	<u>Lot 48</u>
59.39 feet	7-14-87	57.37 feet 9-22-87
67.72 feet	5-27-88	61.73 feet 7-28-88

The State Engineer finds that these figures more closely reflect the Summer season static water levels for those 2 wells.

In addition, Applicant's evidence indicated that specific water level measurements were conducted at 5:00 P.M., 8:00 P.M., 10:00 P.M., 12:00 A.M., 2:00 A.M. and 4:00 A.M. during the periods July 26-28, 1988; August 6, 9, 14 and 23, 1988 and September 4, 8 and 16, 1988. The subject existing permitted wells were on a cycle schedule of alternating periods of pumping during the above dates from 4:00 P.M. to 4:00 A.M. (i.e.: 1st night - North well pump on, South well pump off; 2nd night - North well pump off, South well pump on; 3rd night - North well pump on, South well pump off, etc.).²² In all cases, the

²⁰ Data determined by staff in the office of the State Engineer. See transcript, Applicant's Exhibit #3, Sheets 1, 2 and 3.

²¹ See transcript, Applicant's Exhibit #3, Sheets 1, 2 and 3.

²² See transcript, Applicant's Exhibit #3, Plates 5, 6 and 7.

State Engineer finds that the monitored domestic wells demonstrated a rise in water level from 5:00 P.M. to 4:00 A.M.

XIV.

Any application for a permit or any permit to appropriate water may be assigned subject to the conditions of the permit, but no such assignment is binding except between the parties thereto, unless filed for record in the office of the State Engineer.²³

XV.

Applicant's evidence also included copies of an Agreement dated July 18, 1980, and an Addendum to Agreement dated August 25, 1982, between the Indian Hills General Improvement District and the Douglas County School District.²⁴ The State Engineer finds that the Addendum to Agreement contains conditions that the School District will only be required to transfer such sufficient water to serve the number of students that the School District has enrolled in the school, and that the I.H.G.I.D. will not be required to furnish water to the School District for additional demand in excess of the water rights transferred by the School District.

XVI

In the case of ground water, NRS 534.090 indicates that a finding of forfeiture requires a period of 5 successive years of non-use after April 15, 1967, and also states that the forfeiture provisions apply to "any right, whether it is an adjudicated right, an unadjudicated right, or a permitted right", regardless of the date that the right was initiated.²⁵ (emphasis added.)

²³ NRS 533.385(2)

²⁴ See transcript, Applicant's Exhibit #1.

²⁵ See State Engineer's Ruling on Remand, p. 5, No. 2804 dated April 15, 1983, public

The State Engineer finds that "permitted" rights which are the subject of a certificate of appropriation, are also determined rights and become subject to²⁶ the forfeiture statute.²⁷ Therefore, a permitted right which has not been perfected through proof of beneficial use for a certificate of appropriation is not subject to a determination of forfeiture.²⁶

XVII.

The State Engineer finds that an important statutory procedure is set forth which provides for certain time periods to show beneficial use under approved applications to appropriate (permits). Cancellation of a permit may be considered the parallel counterpart to forfeiture and requires not only the determination of due diligence but also the same requirement of beneficial use of the public waters as does forfeiture.²⁶

In addition, the State Engineer may, for good cause shown, extend the time within which the water must be applied to a beneficial use under any permit therefor issued by him.²⁸

XVIII.

Every application for a permit to change the place of diversion, manner of use, or place of use of water already appropriated shall contain such information as may be necessary to a full understanding of the proposed change, as may be required by the State Engineer.²⁹

record in the office of the State Engineer. Hereinafter referred to as "Ruling".

²⁶ See Ruling, p. 6.

²⁷ NRS 534.090.

²⁸ NRS 533.380(3).

²⁹ NRS 533.345.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.³⁰

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:³¹

- 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.

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.

³⁰ NRS Chapters 533 and 534.

³¹ NRS 533.370(3)

IV.

The State Engineer has determined that there is no statute within NRS Chapters 533 and 534 that requires the State Engineer to enforce the conditions/provisions of any contract or agreement in which the State Engineer is not a direct party thereto. In addition, the State Engineer has determined that any such contract or agreement may not constitute a legal document binding the State Engineer to assign or transfer ownership of water rights.

V.

Based upon Findings of Fact X, XI, XII and XIII, the monitored domestic wells demonstrated recovery during the Winter-Spring seasons to water levels at or near the static water levels reported on the well logs immediately after completion, while the School District was consumptively using approximately 15 to 17 MGA. In addition, all 5 wells monitored by the Applicant demonstrated night-time recovery even though at least one or the other well serving the School District was being pumped continuously from 4:00 P.M. to 4:00 A.M. The State Engineer has concluded that the annual increase in the maximum static water level depths occurring during the previous Summer seasons was substantially influenced by the area wide drought conditions experienced since the Fall of 1986, and other factors such as increased outside water usage due to the lack of adequate precipitation during those Summer seasons.

VI.

NRS 534.110(4) specifically states that it shall be an express condition of each appropriation of groundwater acquired under this chapter that the right of the appropriation shall relate to a specific quantity of water and that such right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion. In addition, Part 12.01 of the Regulations for Drilling Water Wells specifically

states that "a domestic well must be of sufficient depth to provide a capacity of 1,800 gallons per day, taking into account the normal annual fluctuations and, if the well is in a developed area, some annual drop in static water level."

VII.

Based upon the evaluation stated under Conclusion V., the State Engineer has determined that there is no evidence of unreasonable lowering static water levels within the subject Valley View groundwater sub-basin. In addition, with respect to the provisions stated under Conclusion VI., the State Engineer has determined that there is presently no indication that the granting of Applications 52288 and 52289 would cause an adverse affect on existing rights nor would the proposed use threaten to prove detrimental to the public interest, provided that the subject applications are expressly limited to serve only such property owned by the Douglas County School District within the Valley View groundwater sub-basin.

VIII.

The State Engineer has determined that the forfeiture provisions under NRS 534.090(1) do not apply to non-perfected (non-certificated) water right permits, such as the subject base rights 42548 and 42549.

IX.

The State Engineer is specifically authorized, for good cause shown, to extend the time within which the water must be applied to a beneficial use. ²⁸

RULING

The protests by the Indian Hills General Improvement District to granting Applications 52288 and 52289 are hereby overruled on the grounds that the State Engineer is without statutory authority to comply with the condition requested in said

protests.

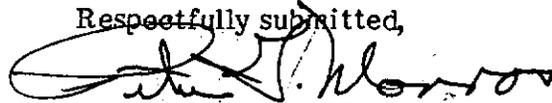
The protests by the Residents of Valley View Subdivision, Unit No. 2 to granting Applications 52288 and 52289 are hereby overruled and Applications 52288 and 52289 are herewith granted on the grounds that the granting thereof will not conflict with existing right nor be otherwise detrimental to the public interest.

Applications to change 52288 and 52289 will be issued subject to the following conditions:

1. The subject applications will be expressly limited to serve only such property owned by the Douglas County School District within the described place of use.
2. Totalizing meters will be installed on each existing well covered by the subject applications, and these meters will be fully functional and operational at all times that water is being diverted from the permitted wells.
3. A water level monitoring program of domestic wells located in the nearby vicinity of the subject permitted wells will be established by the Applicant with prior approval of said program required by the State Engineer, within 90 days from the date of this ruling.
4. Approval by the State Engineer will be required before any physical connection is made between the Douglas County School District water system and the Indian Hills General Improvement District water system, or any other water distribution system, which is above and beyond that required to accomplish the beneficial use represented under the subject applications.

5. The total combined duty under Applications 52288 and 52289 will be limited to 25.56 MGA. The total combined duty under Applications 52288, 52289 and Permits 42548, 42549, or any subsequent change applications granted, will be limited to 32.85 MGA.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/SHF-TT/bk

Dated this 18th day of

April, 1989.