

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

IN THE MATTER OF APPLICATIONS 53602,))
53605 AND 53641 FILED TO CHANGE THE))
POINT OF DIVERSION, MANNER AND PLACE))
OF USE OF WATERS HERETOFORE))
APPROPRIATED FROM LONGSTREET SPRING,))
THREE SPRINGS GROUP, AND UNNAMED))
SPRING, RESPECTIVELY, ALL LOCATED IN))
AMARGOSA DESERT, NYE COUNTY, STATE))
OF NEVADA.))

RULING

GENERAL

I.

Application 53602 was filed on June 30, 1989 by U.S. Fish and Wildlife Service to change the point of diversion, manner and place of use of 2.4 c.f.s. of water heretofore appropriated under Permit 18094, Certificate 8440. The proposed use is for wildlife purposes within the Ash Meadows National Wildlife Refuge. The proposed point of diversion is described as being within the NW1/4 NE1/4 Section 22, T.17S., R.50E., M.D.B.&M. The existing place of use is 43.96 acres of land located within the SW1/4 SE1/4 Section 15 and NW1/4 NE1/4 Section 22, T.17S., R.50E., M.D.B.&M. The existing point of diversion is described as being within the NW1/4 NE1/4 Section 22, T.17S., R.50E., M.D.B.&M.¹

A timely protest was filed to the granting of Application 53602 by Lisle Lowe. The grounds of the protest are as follows:¹

"(1) This amount of water is not needed to support the existing wildlife in the Ash Meadows area.

(2) In a letter dated January 27, 1984 an agreement was noted which states that the Fish and Wildlife Dept. would cooperate in a thorough study of the water in this area, and the excess water would be made available. This letter was signed by Nye County Commission, Fish and Wildlife, and the Bureau of Land Management. To my knowledge, this study has not been done."

Therefore the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

¹ Public record in the Office of the State Engineer.

Permit 18094 was issued on April 14, 1972 and Certificate 8440 was issued on February 14, 1975 to Cappaert Enterprises and was later assigned to United States of America, Fish and Wildlife Service to appropriate 2.4 c.f.s., but not to exceed 219.8 acre-feet annually, of water from Longstreet Spring for irrigation and domestic purposes on 43.96 acres located within the SW1/4 SE1/4 Section 15 and NW1/4 NE1/4 Section 22, all located in T.17S., R.50E., M.D.B.&M. The point of diversion is described as being located within the NW1/4 NE1/4 Section 22, T.17S., R.50E., M.D.B.&M.¹

Application 53605 was filed on June 30, 1989 by U.S. Fish and Wildlife Service to change the point of diversion, manner and place of use of 0.272 c.f.s. of water heretofore appropriated under Permit 24949, Certificate 7359. The proposed use is for wildlife purposes within the Ash Meadows National Wildlife Refuge. The proposed point of diversion is described as being within the SW1/4 NW1/4 Section 23, T.17S., R.50E., M.D.B.&M. The existing place of use is 51.0 acres of land located within the NW1/4 NE1/4, SW1/4 NE1/4, SE1/4 NW1/4, and NE1/4 NW1/4 Section 22, T.17S., R.50E., M.D.B.&M. The existing point of diversion is described as being on the boundary line between the NE1/4 NE1/4 Section 22, and NW1/4 NW1/4 Section 23, T.17S., R.50E., M.D.B.&M.¹

A timely protest was filed to the granting of Application 53605 by Earl Selbach. The grounds of the protest are as follows:¹

"The Fish and Wildlife Service does not need this amount of water to protect the wildlife habitat. The F.W.S. is filing protests on any application outside the wildlife refuge, which is having an adverse impact on the human environment of the Amargosa Valley.

There was an agreement in 1984 between the F.W.S., B.L.M. and Nye Co. Commissioners that the U.S.G.S. would make a THOROUGH study of the hydrology of the Ash Meadows area. The FWS agreed to make the water not needed available. The U.S.G.S. report on the minimum amount of water needed by the F.W.S. should be available before any change of manner of use should go on record."

Therefore the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

Permit 24949 was issued on July 25, 1969, and Certificate 7359 was issued on May 19, 1970 to Spring Meadows Inc. and was later assigned to United States of America, Fish and Wildlife Service to appropriate 0.272 c.f.s., but not to exceed 196.7 acre-feet annually, of water from Unnamed Springs for irrigation purposes on 51.0 acres located within the W1/2 NE1/4 and E1/2 NW1/4 Section 22, T.17S., R.50E., M.D.B.&M. The points of diversion are described as lying on the boundary line between the NE1/4 NE1/4 Section 22 and NW1/4 NW1/4 Section 23, all located in T.17S., R.50E., M.D.B.&M.¹

Application 53641 was filed on June 30, 1989 by U.S. Fish and Wildlife Service to change the point of diversion, manner and place of use of 2.54 c.f.s. of water heretofore appropriated under Permit 161, Certificate 10. The proposed use is for wildlife purposes within the Ash Meadows National Wildlife Refuge. The proposed points of diversion are located within the NW1/4 SW1/4 Section 12, T.18S., R.50E., M.D.B.&M; SE1/4 NW1/4 Section 18; SW1/4 NE1/4 Section 7 (9 points), T.18S., R.51E., M.D.B.&M. The existing points of diversion are described as springs near the center of Section 7 and near the center of the NW1/4 of Section 18, T.18S., R.51E., M.D.B.&M.; also at springs in the NW1/4 SW1/4 Section 12, T.18S., R.50E., M.D.B.&M.¹

A timely protest was filed to the granting of Application 53461 by Mike Gilgan, S.M.E. The grounds of the protest are as follows:¹

"that the application, if granted, may cause injury to the appropriative rights of the residents of Amargosa Valley. Points of Rocks Springs have been used for irrigation and domestic purposes for over 100 years and it serves no purpose to change the manner of use on this amount of water at this time. The U.S.F.W.S. is filing protests indiscriminately which would indicate total disregard for people's needs and rights - ALSO, they have no knowledge of the amount of water needed to accomplish their task. The U.S.G.S. report of the "THOROUGH study" should be used to determine the amount of water needed by the U.S.F.W.S. as per agreement between the U.S.F.W.S., B.L.M. and Nye County. When this is established, the U.S.F.W.S. can make intelligent applications."

Therefore the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

Permit 161 was issued on December 1, 1906, and Certificate 10 was issued on June 18, 1912 to Eagle Mountain Water Company and was later assigned to United States of America, Fish and Wildlife Service to appropriate 2.54 c.f.s. of water from several springs for irrigation purposes on 15.02 acres located within the SE1/4 SE1/4 Section 11 and W1/2 SW1/4 Section 12, all in T.18S., R.50E., M.D.B.&M. The points of diversion are described as being near the center of Section 7 and near the center of the NW1/4 of Section 18, all located in T.18N., R.51E., M.D.B.&M.; and within the NW1/4 SW1/4 Section 12, T.18S., R.50E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Deeds filed in the Office of the State Engineer have assigned water rights under Permit 161, Certificate 10, several springs; Permit 18094, Certificate 8440 Longstreet Spring; and Permit 24949, Certificate 7359, Unnamed Spring; to the United States of America, Fish and Wildlife Service, Department of the Interior. This assignment includes the places of use and points of diversion of the said permits and certificates.²

II.

The final water right obtained under a permit is dependent upon the amount of water actually placed to beneficial use.³

III.

The Supreme Court of the State of Nevada has determined "that providing water to wildlife is a beneficial use of water."⁴

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and subject matter of this action.⁵

² Public record in the Office of the State Engineer in File 20663. Clark County Recorders File No. 116435, Bk. 446, Pgs. 509-13.

³ NRS 533.400

⁴ State of Nevada v. Peter G. Morros, 104 NEV. 709, 766. P.2d 263 (1988).

⁵ NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under an application to change the point of diversion, manner and place of use of the public waters heretofore appropriated where:⁶

- 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.

The State Engineer concludes that the applicant, U.S. Fish and Wildlife Service, owns and controls the points of diversion and places of use of Permit 18094, Certificate 8440; Permit 24949, Certificate 7359; and Permit 161, Certificate 10. The applicant also owns and controls the proposed points of diversion and place of use of corresponding change Application Nos. 53602, 53605 and 53641, respectively.

IV.

The State Engineer is not party to any agreement which would influence the issuance of permits under Applications 53602, 53605 and 53641.

⁶ NRS 533.370(3)

RULING

The protests to the granting of Applications 53602, 53605 and 53641 are overruled on the grounds that the protestants do not own or control the water source or the place of use of said applications. Permits will be issued under Applications 53602, 53605 and 53641 upon the submission of the required permit fees.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SW/pm

Dated this 28th day of
September, 1990