

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

IN THE MATTER OF APPLICATION 44700 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE CLOVER)
VALLEY GROUNDWATER BASIN (177), ELKO)
COUNTY, NEVADA.)

RULING

4515

GENERAL

I.

Application 44700 was filed on October 28, 1981, by Vernon and Joan Westwood to appropriate 6.0 cubic feet per second, not to exceed 1280 acre-feet annually, of water from an underground source for irrigation and domestic purposes within the E $\frac{1}{2}$ of Section 11, T.34N., R.62E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T.34N., R.62E., M.D.B.&M.¹

II.

Application 44700 was timely protested by Taylors Ltd. on the following grounds:¹

Taylors, Ltd. has producing wells in area which represents substantial investment in irrigation equipment and farmland. We feel more wells in area would jeopardize production of these wells.

Therefore, the protestant requests that the application be denied.

III.

The State Engineer initially described and designated the Clover Valley Groundwater Basin on March 11, 1985, under the provisions of NRS 534.030, as a basin in need of additional administration.² The proposed point of diversion under Application 44700 is located within the boundaries of the designated Clover Valley Groundwater Basin.

¹File No. 44700, official records in the Office of the State Engineer.

²State Engineer's Order No. 850, dated March 11, 1985, official records in the Office of the State Engineer.

IV.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held in Wells, Nevada, before representatives of the Office of the State Engineer on March 6, 1985, regarding protested Application 44700, among others.

FINDINGS OF FACT

I.

The perennial yield of a hydrologic basin is the maximum amount of water of usable chemical quality that can be consumed economically each year for an indefinite period of time. Perennial yield cannot exceed the natural replenishment to an area indefinitely, and ultimately is limited to the maximum amount of natural recharge that can be salvaged for beneficial use. If the perennial yield is continually exceeded, groundwater levels will decline until the groundwater reservoir is depleted.³ Withdrawals of ground water in excess of the perennial yield contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased economic pumping lifts, land subsidence and possible reversal of groundwater gradients which could result in significant changes in the recharge-discharge relationship. The United States Geological Survey estimates that the perennial yield of the Clover Valley Groundwater Basin is 19,000 acre-feet annually.⁴ The State Engineer finds that existing certificated and permitted ground water rights in the Clover Valley Groundwater Basin do not exceed the perennial yield.

³State Engineer's Office, WATER FOR NEVADA, STATE OF NEVADA WATER PLANNING REPORT NO. 3, p. 13, Oct. 1971.

⁴Eakin, T.E., Maxey G.B., Robinson, T.W., Fredericks, J.C. and Loeltz, O.J., Water Resources Bulletin No. 12, Contributions to the Hydrology of Eastern Nevada, p. 110, 1951.

II.

The State Engineer finds that the total duty of water applied for under Application 44700 is 1,280 acre feet annually.

III.

The State Engineer finds that the closest well to the point of diversion under Application 44700, which is not owned by the applicant, is authorized under Permit 35535, Certificate 11836, and is approximately 1.9 miles from the point of diversion under Application 44700.

IV.

The State Engineer finds that the closest well to the point of diversion of Application 44700, currently or previously owned by the protestant, is authorized under Permit 32168, Certificate 10510, and is approximately 4.0 miles from the point of diversion under Application 44700.

V.

The State Engineer finds that the protestant testified that its wells had generally been adversely affected by the permitted pumping already occurring in the area.⁵ Other water right holders conveyed similar comments during the public comment period at the end of the administrative hearing. The State Engineer finds that the protestant did not provide any specific evidence as to a measured decline in the static water levels that had occurred in any specific wells over a specified period of time.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.⁶

⁵Transcript, public administrative hearing before the State Engineer, March 6, 1985, official records in the Office of the State Engineer.

⁶NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:¹

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

III.

The State Engineer concludes there is water available for appropriation in the Clover Valley Groundwater Basin.

IV.

The closest well of Protestant is approximately 4 miles from the proposed point of diversion and no substantive evidence was presented to support the protestant's claims of water level declines or the actual effect of the pumping of the applicant's well on the protestant's wells. The State Engineer concludes that no evidence was presented that the granting of Application 44700 would effect Protestant's wells thereby conflicting with the protestant's existing water rights or would threaten to prove detrimental to the public interest. The State Engineer concludes that applications cannot be denied on conjecture that they will interfere with existing rights, but rather protests must be supported by evidence.

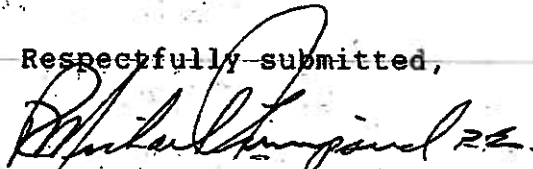
¹NRS 533.370(3).

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RULING

The protest to Application 44700 is hereby overruled and Application 44700 is hereby granted upon payment of the required statutory permit fee.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/RAD/ab

Dated this 19th day of
March, 1997.