

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 51131)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE IN)
BIG SMOKY VALLEY-TONOPAH FLAT)
GROUNDWATER BASIN (BASIN 137A), WITHIN)
NYE, MINERAL AND ESMERALDA COUNTIES,)
NEVADA.)

RULING

GENERAL

I.

Application 51131 was filed on July 21, 1987, by agent Wallace T. Boundy for applicant Boyce E. Stewart to appropriate 2.0 cubic-feet per second (c.f.s.) and 10 million gallons annually (m.g.a.) of water from an underground source for mining and milling purposes within the NW1/4 of SW1/4 Section 24, portions of W1/2 of SW1/4 Section 22, and portions of E1/2 of SE1/4 Section 21, T.8N., R.43E., M.D.B.&M. The point of diversion is described as being within the NW1/4 of SW1/4 Section 24, T.8N., R.43E., M.D.B.&M, within the Big Smoky Valley-Tonopah Flat Groundwater Basin (Basin 137A).¹

Manhattan Gulch Channel is aligned approximately east and west, meanders through the S1/2 of N1/2 of Section 23 and Section 24, T.8N., R.43E., and generally slopes down from east to west. Dredge tailings have been deposited throughout the length of the Gulch Channel in this area, and these tailings deposits vary in width from approximately 300 feet to 500 feet. The proposed point of diversion is located on the south side of Manhattan Gulch approximately 1/4 mile uphill from the Gulch Channel.

The ground surface elevation of the Gulch Channel at a point nearest to the proposed point of diversion is estimated to be 120 feet lower than the ground surface elevation at the proposed point of diversion.²

¹ Public record in the office of the State Engineer, Nevada Division of Water Resources.

² Elevations, distances and directions have been estimated from U.S. Geological Survey, Topographic Map; Public record in the office of the State Engineer, Nevada Division of Water Resources.

II.

A protest to Application 51131 was filed on October 21, 1987, in compliance with Nevada Revised Statutes (NRS), Chapters 533 and 534, by Robert M. Bottom for the following reasons and on the following grounds, to wit:¹

"Because of the lack of moisture last winter, my own operation had been cut back. The water table in this (Manhattan) area has dropped drastically. Echo Bay's operations as well as mine and the town source is low. Echo Bay has had to cut 1 full shift because of water shortages."

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."

III.

A protest to Application 51131 was filed on October 29, 1987, in compliance with Nevada Revised Statutes (NRS), Chapters 533 and 534, by Joseph H. Von Harten for the following reasons and on the following grounds, to wit:¹

"I believe this well is on exactly the same water strata as my well. I am filing this protest in the event this well pulls my water table down or depletes it."

The protestant requests "that the application be issued subject to prior rights and that an order be entered for such relief as the State Engineer deems just and proper."

FINDINGS OF FACT

I.

Pursuant to NRS Chapter 533, after notice of formal field investigation to applicant, protestants, and other interested parties of record, a formal field investigation was conducted on June 17, 1988, by Nevada Division of Water Resources to consider protests and to acquire information in the matter of Application 51131 to assist the State Engineer to determine appropriate action in this matter.³

During this field investigation, Robert M. Bottom signed a statement declaring that he had no objection to issuing a permit under Application 51131, subject to prior rights, and that he wished to protect his existing water rights.^{1,3}

II.

By Order No. 725, dated May 14, 1979, the State Engineer designated and described Big Smoky Valley-Tonopah Flat Ground Water Basin under provisions of NRS Chapter 534 (Conservation and Distribution of Underground Waters).¹

III.

Review of office records determined that Joseph H. and Carolyn J. Von Harten are recorded as owner of Permit 49369, an underground source.¹

IV.

Review of office records determined that Robert M. Bottom is not recorded as owner of any water right in the vicinity of the proposed point of diversion under Application 51131.¹

Robert M. Bottom claimed ownership of the following water rights:³

<u>PERMIT</u>	<u>CERTIFICATE</u>	<u>SOURCE</u>	<u>OWNER OF RECORD</u>
12420	4920	dug well	Cole, Williams, Livingston
12647	4335	seepage pond	Cole, Williams, Livingston
12648	4921	dug well	Cole, Williams, Livingston
12000	4161	seepage pond	Russell

V.

Permit 12647 was approved, and Certificate 4335 was issued to divert 1.0 c.f.s. of seepage waters from a pond located in Manhattan Gulch within SE1/4 NE1/4 Section 23, T.8N., R.43E. for mining and milling purposes. This pond is approximately 160 feet lower

³ Report of Formal Field Investigation, dated September 27, 1988; Index No. 819; Public record in the office of the State Engineer, Nevada Division of Water Resources.

than and 0.34 miles northwest from the proposed point of diversion under Application 51131. Permit 12647 pond site is down slope from Application 51131 well site. Apparently this pond was constructed by dredging.^{1,2,3}

VI.

Permit 12000 was approved, and Certificate 4161 was issued to divert 5.0 c.f.s. of seepage waters from a dredged pond located in Manhattan Gulch within SW1/4 NE1/4 Section 23, T.8N., R.43E. for mining and milling purposes. This pond is located approximately 160 feet lower than and 0.55 miles west-northwest from the proposed point of diversion under Application 51131. Permit 12000 pond site is down slope from Application 51131 well site.^{1,2,3}

VII.

Permit 12420 was approved, and Certificate 4920 was issued to divert 0.008 c.f.s. of underground waters from a dug well located in Manhattan Gulch within SE1/4 NW1/4 Section 24, T.8N., R.43E. for mining and milling purposes. This well is located approximately at the same elevation as and 0.53 miles northeast from the proposed point of diversion under Application 51131. This well is a vertical shaft, about 5 feet by 5 feet by 50 feet deep, wood lined about 25 feet deep and was dry at the time of the inspection. There was no equipment at this well site normally associated with operation of a well.^{1,2,3}

VIII.

Permit 12648 was approved, and Certificate 4921 was issued to divert 0.01 c.f.s. of underground waters from a dug well located in Manhattan Gulch within SW1/4 NE1/4 Section 24, T.8N., R.43E. for mining and milling purposes. This well is located approximately 40 feet higher than and 0.76 miles east-northeast from the proposed point of diversion under Application 51131. This well is a vertical shaft, about 5 feet by 5 feet cross section, wood lined about 25 feet deep, and was 65 feet deep to water surface at the time of inspection. The well was not in use at the time of the inspection; and apparently has not been used for about three years.^{1,2,3}

IX.

Permit 49369 was approved to divert 1.0 c.f.s. (1.0 m.g.a.) of underground waters from a well located within the NW1/4 of SE1/4 of Section 24, T.8N., R.43E. for mining and milling purposes. The point of diversion is located on the south side of Manhattan Gulch approximately 1/8 mile uphill from the Gulch Channel. This well is located approximately 100 feet higher than and 0.68 miles east from the proposed point of diversion under Application 51131. This well appeared to be in operating condition. There is a ridge, gully and hill between Application 51131 well site and Permit 49369 well site.^{1,2,3}

X.

Applications for permits to appropriate underground water within Big Smoky Valley-Tonopah Flat Groundwater Basin for mining and milling purposes previously have been approved by the State Engineer under preferred use provisions of Nevada Revised Statutes.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁴

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁵

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use or change conflicts with existing rights, or

⁴ NRS Chapters 533 and 534.

⁵ NRS 533.370 (3).

- C. The proposed use or change threatens to prove detrimental to the public interest.

III.

Nevada Revised Statutes provides that all water appropriated for beneficial use is subject to existing rights.⁶

IV.

Nevada Revised Statutes provides that the State Engineer is authorized and directed to designate preferred uses of underground water within designated areas.⁷

Mining and milling are considered to be preferred uses of underground water in the vicinity of the proposed point of diversion under Application 51131.

V.

Nevada Revised Statutes provides that each right to appropriate groundwater must allow for a reasonable lowering of the static water level at the point of diversion and that the granting of a permit is not prevented on the ground that the water level may be lowered at the point of diversion of a prior appropriator, so long as the existing appropriation can be satisfied.⁸

VI.

The record does not disclose any evidence that the proposed appropriation of water under Application 51131 will conflict with existing water rights or threaten to prove detrimental to the public interest.

VII.

Robert M. Bottom submitted a protest to Application 51131 requesting that the Application be denied. Subsequently Mr. Bottom signed a statement declaring that he has no objection to issuing a permit under the Application subject to prior rights.

⁶ NRS 533.030.

⁷ Nevada Revised Statutes, NRS 534.120.

⁸ NRS 534.110.

RULING

I.

The protest of Robert M. Bottom is overruled on the grounds (1) that Mr. Bottom signed a statement declaring that he has no objection to issuing a permit under Application 51131 subject to prior rights, and (2) that the record does not disclose any evidence that the proposed appropriation of water under Application 51131 will conflict with existing water rights. The State Engineer does not make any determination concerning possible changes in the water table in this area, or the other assertions expressed by the protest.

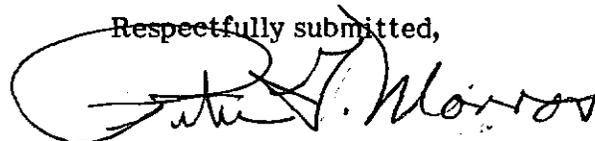
II.

The protest of Joseph H. Von Harten is hereby affirmed in part, except the State Engineer does not make any determination whether the proposed well under Application 51131 will withdraw water from the same water strata as the well under Permit 49369.

III.

Application 51131 will be approved upon receipt of the permit fee, subject to prior water rights and to terms, limitations and conditions specified by the permit, on the grounds that this appropriation will not conflict with existing rights and will not be detrimental to the public interest, and that mining and milling are preferred uses of underground water in this area.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM/RLT/bk

DATED this 17th day of
November, 1988.