

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 52071)
AND 52526 FILED TO CHANGE THE POINT OF)
DIVERSION AND APPLICATION 52527 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE IN BIG SMOKY)
VALLEY, TONOPAH FLAT GROUNDWATER)
BASIN (BASIN 137A), WITHIN NYE COUNTY,))
NEVADA.

RULING

GENERAL

I.

Application 52071 was filed on May 3, 1988, by Echo Bay Minerals Company to change the point of diversion of 0.4 c.f.s. of water, a portion of water heretofore appropriated under Permit 49683. The proposed use is for mining, milling and domestic purposes within the S $\frac{1}{2}$ and S $\frac{1}{2}$ N $\frac{1}{2}$ of Section 19, T.8N., R.44E., M.D.B.&M. The proposed point of diversion is described as being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 24, T.8N., R.43E., M.D.B.&M. The existing point of diversion is described as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T.8N., R.44E., M.D.B.&M.¹

Application 52526 was filed on September 20, 1988, by Echo Bay Minerals Company to change the point of diversion of 0.4 c.f.s. of water heretofore applied for under Application 52071. The proposed use is for mining, milling and domestic purposes within the S $\frac{1}{2}$ and S $\frac{1}{2}$ N $\frac{1}{2}$ Section 19, T.8N., R.44E., M.D.B.&M. The proposed point of diversion is described as being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 24, T.8N., R.43E., M.D.B.&M. The existing point of diversion is described as being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 24, T.8N., R.43E., M.D.B.&M.¹

Application 52527 was filed on September 20, 1988, by Echo Bay Minerals Company to appropriate 1.0 c.f.s. of water from an underground source for mining, milling and domestic purposes within the S $\frac{1}{2}$ and S $\frac{1}{2}$ N $\frac{1}{2}$ Section 19, T.8N., R.44E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 24, T.8N., R.43E., M.D.B.&M.¹

¹ Public record in the office of the State Engineer.

Application 51131 was filed on July 21, 1987, by Boyce E. Stewart and was subsequently approved on December 30, 1988, to appropriate 2.0 c.f.s. and 10 (m.g.a.) million gallons annually from an underground source for mining and milling purposes within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 24, portions of the W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 222, and portions of the E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 21, all in T.8N., R.43E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 24, T.8N., R.43E., M.D.B.&M.¹

Application 52526 was filed to correct the point of diversion of protested Application 52071. This proposed change moved the well location closer to the protestant's well under Permit 51131. Application 52527 proposes the withdrawal of additional water from the same well as Application 52526.

The wells under Permit 51131 and Applications 52526 and 52527 both lie within the same drainage which runs from SE to NW into the Manhattan Gulch Channel. The wells under Applications 52526 and 52527 bear S.59°54'22"E. a distance of 1,840.8 feet from the well location of Permit 51131 as calculated from the respective bearing and distance ties.¹

The ground surface elevation of the Permit 51131 is estimated to be 125' lower than the well proposed under Applications 52526 and 52527.²

II.

A protest to Application 52071 was filed on July 12, 1988, in compliance with Nevada Revised Statutes (NRS) Chapters 533 and 534, by Boyce E. Stewart for the following reasons and on the following grounds, to wit:

"They went above me on the same water channel that I found. They were there. We even showed all the holes we had found water in and that there is a distinct water course. It is my firm belief this new source will only support water for my own operation. (My Applications #51131 dated July 21, 1987)."

The protestant requests that the application be "Denied (Unconditional)" and that an order be entered for such relief as the State Engineer deems just and proper.¹

² Elevations were estimated from the U.S. Geological Survey, Topographic Map, 7.5 Minute Series, titled Manhattan, Nev.: public record in the office of the State Engineer.

FINDINGS OF FACT

I.

The point of diversion as corrected by Application 52526 will be closer to the protestant's well under 51131 than it would have been under protested Application 52071. Therefore, the resolution of the protest of Application 52071 will also apply to Application 52526.

II.

There is no hydrologic evidence that would adequately substantiate the claimed adverse affects of the proposed well under Applications 52526 and 52527 on the well drilled under Permit 51131.

III.

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

IV.

Applications for permits to appropriate underground water within Big Smoky Valley-Tonopah Flat Grounwater 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
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action.

³ NRS 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:⁴

- 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.

Nevada Revised Statutes provide that all water appropriated for beneficial use is subject to existing rights.⁵

IV.

Nevada Revised Statutes provide that the State Engineer is authorized and directed to designate preferred uses of underground water within designated areas.⁶

V.

Nevada Revised Statutes provide 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.⁷

⁴ NRS 533.370(3).

⁵ NRS 533.030.

⁶ NRS 534.120.

⁷ NRS 534.110.

VI.

The record does not disclose any evidence that the proposed appropriation of water under Applications 52526 and 52527 will conflict with existing water rights or threaten to prove detrimental to the public interest. However, the State Engineer concludes that monitoring of the water levels is appropriate.

RULING

I.

The protest of Boyce E. Stewart is hereby affirmed in part due to the close proximity of the well under Permit 51131 and the proposed well under Applications 52526 and 52527. The State Engineer does not make any determination whether the proposed well under applications 52526 and 52527 will withdraw water from the same water strata as the well under Permit 51131. The State Engineer will require the installation of a monitoring well between the well under Permit 51131 and the proposed well under Applications 52526 and 52527 at a location to be determined by the State Engineer. The monitoring well shall be in place prior to the commencement of any pumping from the proposed well.

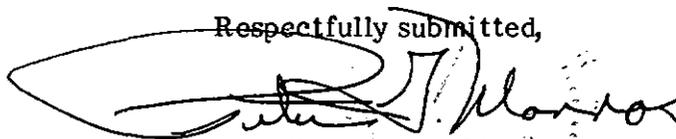
II.

Applications 52071, 52526 and 52527 will be approved upon receipt of the permit fees. Application 52526 will summarily abrogate Permit 52071. All approvals will be subject to prior rights and to terms, limitations and conditions specified in the permits.

III.

The State Engineer does not waive the right to regulate groundwater withdrawals under the subject applications.

Respectfully submitted,


PETER G. MORROS
State Engineer

PGM/SW/bk

Dated this 16th day of
March, 1989.