

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

IN THE MATTER OF THE REMAND OF )  
DENIED APPLICATION 52983 AND )  
APPLICATION 52984, FILED TO )  
APPROPRIATE THE WATERS OF AN )  
UNDERGROUND SOURCE WITHIN THE )  
IVANPAH NORTH GROUNDWATER )  
BASIN, CLARK COUNTY, NEVADA )

SUPPLEMENTAL  
RULING ON REMAND

# 3979

GENERAL

I.

Application 52983 was filed on March 3, 1989, by Baron Mining Corporation to appropriate 0.215 c.f.s. of water from an underground source for mining, milling and domestic purposes within portions of Sections 22, 23, 26 and 27, all within T.25S., R.59E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 27, T.25S., R.59E., M.D.B.&M.<sup>1</sup>

II.

Application 52984 was filed on March 3, 1989, by Baron Mining Corporation to appropriate 0.292 c.f.s. of water from an underground source for mining, milling and domestic purposes within portions of Sections 22, 23, 26 and 27, all within T.25S., R.59E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 23, T.25S., R.59E., M.D.B.&M.<sup>2</sup>

FINDINGS OF FACT

I.

The State Engineer denied Application 52983 and Application 52984 by Ruling No. 3733 dated July 31, 1990, on the grounds that, "additional groundwater withdrawals for mining and milling purposes from the area described in the applications would tend to impair

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<sup>1</sup>Public record in the office of the State Engineer filed under Permit 52983.

<sup>2</sup>Public record in the office of the State Engineer under Permit 52984.

the value of existing rights and be otherwise detrimental to the public welfare."<sup>3</sup>

II.

A petition for Judicial Review of Administration Agency Decision was filed by Keith D. Brecheisen, Chief Executive Officer for Baron Mining Corporation concerning Ruling No. 3733 with the District Court of the State of Nevada in and for the County of Clark on September 20, 1990.<sup>4</sup>

III.

A Stipulation and Order of Remand signed by Michael J. Wendell for Carl J. Christensen, District Judge, District Court, Clark County, Nevada was issued on December 4, 1990. Said Order remanded Case No. A 287690, Dept. VII, Docket "P", pertaining to the subject denied applications to the State Engineer for administrative hearing to supplement the record.<sup>4</sup>

IV.

A public administrative hearing in the matter of the denied applications was held before representatives of the State Engineer on February 4, 1991, in Las Vegas, Nevada, pursuant to the remand order.<sup>5</sup>

V.

The State Engineer finds that several events have taken place since the subject applications were denied and since the Administrative hearing of September 20, 1990. Most importantly the 1991 Nevada Legislature passed S.B. 526, which enabled the State Engineer to approve applications for a fixed time if the use is

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<sup>3</sup>Public record in the office of the State Engineer filed under Ruling No. 3733.

<sup>4</sup>Applicant's Exhibit No. 14, public administrative hearing, February 4, 1991, Las Vegas, Nevada, hereinafter referred to as Transcript or Exhibit.

<sup>5</sup>State's Exhibit 1.

temporary and if the particular groundwater basin is over appropriated, but not over pumped.<sup>6</sup>

VI.

The State Engineer finds that since September 20, 1990, several hundred acre-feet of water have been returned to the public waters in the Ivanpah Valley groundwater basin as a result of permits being cancelled or withdrawn.

VII.

A letter was received from the applicant on February 8, 1991, wherein it was stated that they could reduce their water consumption by 42% thereby being able to process the ore with the approval of only Application 52984.<sup>7</sup>

VIII.

The State Engineer finds that the water quality is poor at the proposed point of diversion of the applicant<sup>8</sup> and further that it is in the public's interest to appropriate this brackish water for a beneficial use.

IX.

The State Engineer finds that the pumpage of a small amount of groundwater for a short time period will not interfere with the existing municipal rights in Ivanpah groundwater basin.<sup>9</sup>

X.

The State Engineer finds that Ivanpah Valley is over appropriated with permits and certificates for municipal use in the Jean area. However, full pumpage of those permits and full

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<sup>6</sup>NRS 533.371.

<sup>7</sup>See letter dated February 8, 1991, from Baron Mining Co. in file 52984.

<sup>8</sup>Transcript of Public Administrative Hearing February 4, 1991, p. 24-26 and p. 49 and Exhibit 16.

<sup>9</sup>Testimony of Keith Brecheisen and Terry Katzer, Public Administrative hearing February 4, 1991.

beneficial use of those benefits will not occur until some time after the year 2000.<sup>10</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.<sup>11</sup>

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>12</sup>

- 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 threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that Application 52984 can be approved for a limited time period to allow the applicant to mine out the ore body before full pumpage occurs in Ivanpah Valley.

IV.

The State Engineer concludes that it would be in the public interest to allow the appropriation of poor quality water in the valley floor of Ivanpah Valley for beneficial use for mining and milling and dust control and would not interfere with other municipal rights in the valley.

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<sup>10</sup>Testimony of Terry Katzer, transcript of Public Administrative Hearing February 4, 1991, p. 50.

<sup>11</sup>NRS Chapter 533.

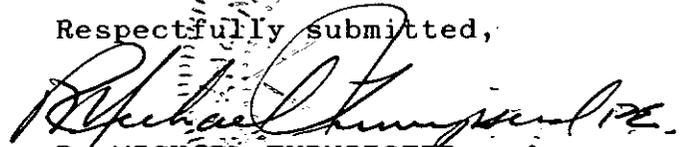
<sup>12</sup>NRS Chapter 533.370.

RULING

Application 52983 is hereby again denied on the grounds that the applicant has voluntarily reduced his consumption of water to an amount that can be delivered under Application 52984. Application 52984 is hereby approved subject to:

1. Prior rights in Ivanpah Valley.
2. Payment of the statutory fees.
3. No changes in point of diversion will be allowed so as not to create an appropriation in any fresh water aquifers.
4. A meter shall be installed on the well discharge line and monthly measurements taken and recorded. Pumpage records shall be submitted to the State Engineer on a quarterly basis.
5. All pumping shall cease and this permit will expire on January 1, 2000.
6. Within 90 days of the cessation of mining or by April 1, 2000, the well shall be plugged and abandoned according to NAC 534.420.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED  
State Engineer

RMT/bk

Dated this 12th day of  
May, 1993.