

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

IN THE MATTER OF CANCELLATION OF PERMITS )  
50145 THROUGH 50150 FILED TO APPROPRIATE )  
THE UNDERGROUND WATERS OF THE PIUTE VALLEY )  
GROUNDWATER BASIN, CLARK COUNTY, NEVADA. )

RULING

# 4513

GENERAL

I.

Applications 50145 through 50150 were filed on September 5, 1986, by OP & P/Search, Joint Venture to appropriate the underground waters of the Piute Valley Groundwater Basin, Clark County, Nevada. Permits 50145 through 50150 were each approved on March 1, 1988, for 2.0 cubic feet per second (cfs) for mining and ore processing. The points of diversion are: NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 30, T.29S., R.63E., M.D.B.&M. (50145); NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 19, T.29S., R.63E., M.D.B.&M. (50146); NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T.29S., R.63E., M.D.B.&M. (50147); NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 13, T.29S., R.62E., M.D.B.&M. (50148); NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 24, T.29S., R.62E., M.D.B.&M. (50149); and NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 25, T.29S., R.62E., M.D.B.&M. (50150). The place of use of each Permit is the entire section in which the point of diversion is located. The current owner of Permits 50145 through 50150 is Milton Christensen. The total combined duty approved for Permits 40145 through 40150 is an amount not to exceed 530 million gallons annually (MGA).<sup>1</sup>

II.

Proof of completion of work was first due on April 1, 1990, and five extensions of time have been approved. Proof of beneficial use was first due on April 1, 1993, and two extensions of time have been approved. In the last Request for Extension of Time filed on April 21, 1995, the Permittee requested that an additional year is needed because of the "tortoise habitat land access". In reviewing the Request for Extension of Time, the State Engineer noted that the time required to resolve the conflict

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<sup>1</sup>File Nos. 50145 through 50150, official records in the Office of the State Engineer.

concerning access to the Desert Tortoise habitat is uncertain. For this reason, it is impossible to determine a reasonably definite period of time to establish beneficial use. The State Engineer found that retaining a water right permit for an indefinite period of time for the proposed, prospective, or pending beneficial use of water is contrary to the intent of Nevada Water Law. The State Engineer further found that the Permittee had not shown good cause to grant an extension of time and that the permittee was not proceeding in good faith and with reasonable diligence as required under NRS 533.395(1). On September 21, 1995, Permits 50145 through 50150 were cancelled.<sup>2</sup> The Permittee then petitioned the State Engineer for a hearing to review the cancellation pursuant to NRS 533.395(2).<sup>3</sup> On November 1, 1996, a hearing was held to consider the cancellation of Permits 50145 through 50150.<sup>4</sup>

At the hearing, administrative notice was taken of the records in the Office of the State Engineer.<sup>5</sup>

FINDINGS OF FACT

I.

At the hearing, the Permittee presented evidence and testimony in support of the fact that he was unable to enter the place of use of Permits 50145 through 50150, due to restrictions by the Federal

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<sup>2</sup>Letter dated September 21, 1995, in File Nos. 50145 through 50150, official records in the Office of the State Engineer.

<sup>3</sup>Letter dated November 16, 1995, from Thomas J. Hall, Esq., in File Nos. 50145 through 50150, official records in the Office of the State Engineer.

<sup>4</sup>Notice of Hearing dated September 23, 1996, in File Nos. 50145 through 50150, official records in the Office of the State Engineer.

<sup>5</sup>Transcript pp. 7-8, Public Administrative Hearing before the State Engineer, November 1, 1996.

Government related to the Desert Tortoise habitat.<sup>6</sup> The Permittee now wishes to concentrate his mining and milling efforts on another location (Section 22, T.28S., R.63E., M.D.B.&M.) where no restrictions are in place and where he has already established a mining and milling operation.<sup>7</sup> If the cancellation of Permits 50145 through 50150 is rescinded, the Permittee wishes to change the points of diversion and places of use to this active mining and milling area.<sup>8</sup> The Permittee demonstrated the need for additional water at this site.<sup>9</sup>

The points of diversion and places of use of Permits 50145 through 50150 are located within the Piute Valley Groundwater Basin.<sup>1</sup> The Permittee's active mining and milling area (Section 22, T.28S., R.63E., M.D.B.&M.) is located within Eldorado Valley Groundwater Basin.<sup>10</sup> The State Engineer finds that a proposed change from Piute Valley to Eldorado Valley represents a change to a different underground source of water and would, in effect, be a new appropriation from the Eldorado Valley Groundwater Basin and could not be approved. Given the Federal Government restrictions, the State Engineer further finds that the Permittee has no plan to perfect these appropriations within a reasonable time at the existing places of use.

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<sup>6</sup>Exhibit No. 1 and Transcript pp. 37-40 and 44, Public Administrative Hearing before the State Engineer, November 1, 1996.

<sup>7</sup>Exhibit No. 1 and Transcript pp. 26-30, Public Administrative Hearing before the State Engineer, November 1, 1996.

<sup>8</sup>Exhibit No. 1, Transcript pp. 43, 54-55, and 57, Public Administrative Hearing before the State Engineer, November 1, 1996.

<sup>9</sup>Evidence regarding water use requirements, submitted on December 2, 1996, in accordance with the order of the Hearing Officer and Transcript pp. 58-62, Public Administrative Hearing before the State Engineer, November 1, 1996.

<sup>10</sup>File Nos. 55145 and 56146, which are permitted for the Permittee's active mining area in Section 22, T.28S., R.63E., M.D.B.&M., official records in the Office of the State Engineer.

II.

As a result of the restrictions imposed by the Federal Government, no activity has occurred at the site of the places of use of Permits 50145 through 50150. The permittee presented evidence and testimony of the activities at his other site (Section 22, T.28S., R.63E., M.D.B.&M.) and requested that the State Engineer consider the Permittee's holdings in the entire Searchlight area as one project.<sup>11</sup> The Permittee would like the State Engineer to apply the mining and milling efforts expended at his Eldorado Valley site (Section 22, T.28S., R.63E., M.D.B.&M.) to be considered as reasonable diligence in pursuit of beneficial use at the places of use of the locations of the cancelled permits (Piute Valley). While the two locations are owned and managed by the Permittee, the State Engineer finds that the two are separate projects that operate independently of each other. The State Engineer further finds that the mining activities at the Eldorado Valley site have no relation to the Piute Valley site.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action.<sup>12</sup>

II.

If in the judgement of the State Engineer, the holder of a permit is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the State Engineer shall cancel the permit.<sup>13</sup> The holder of a cancelled permit may, within 60 days of the cancellation, file a written petition with the State Engineer requesting a review of the cancellation at a public

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<sup>11</sup>Transcript p. 7, Public Administrative Hearing before the State Engineer, November 1, 1996.

<sup>12</sup>NRS Chapter 533.

<sup>13</sup>NRS 533.395(1).

hearing.<sup>14</sup> The State Engineer may, after receiving and considering evidence, affirm, modify, or rescind the cancellation.

III.

The measure of reasonable diligence is the steady application of effort to perfect the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system may be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.<sup>15</sup>

IV.

If the cancellation of a permit is rescinded and the permit is reinstated to good standing, there is the expectation that the water under the reinstated permit will be put to beneficial use within a reasonable time. This is not the case with cancelled Permits 50145 through 50150. The Permittee cannot enter the places of use of said cancelled permits and wishes to concentrate his mining and milling efforts on other properties in another groundwater basin, where these water rights cannot be applied. The State Engineer concludes that the Permittee has no plans to place the water under said cancelled permits to beneficial use within the Piute Valley Groundwater Basin. Furthermore, the State Engineer concludes that the cancellation of Permits 50145 through 50150 should be affirmed.

V.

The mining and milling activities at the Eldorado Valley site have no relation to the proposed mining and milling site in Piute Valley. The State Engineer concludes that the two mining projects cannot be considered different features of the same project. The State Engineer further concludes that the work at the Eldorado

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<sup>14</sup>NRS 533.395(2).

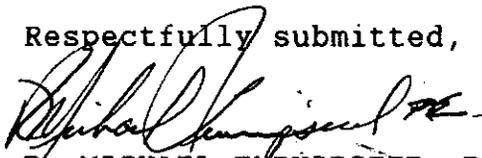
<sup>15</sup>NRS 533.395(5).

Valley site cannot be used to demonstrate that reasonable diligence in perfecting the appropriations has been shown at the Piute Valley site.

RULING

The cancellation of Permits 50145 through 50150 is hereby affirmed on the grounds that the Permittee has not proceeded in good faith and with reasonable diligence to perfect the appropriations.

Respectfully submitted,



E. MICHAEL TURNIPSEED, P.E.  
State Engineer.

RMT/JCP/ab

Dated this 11th day of  
March, 1997.