

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 52888)
AND 52889 FILED TO CHANGE THE POINT)
OF DIVERSION, PLACE OF USE AND)
MANNER OF USE OF THE WATER OF AN)
UNDERGROUND SOURCE HERETOFORE)
APPROPRIATED UNDER PERMIT 14059 AND)
27813 RESPECTIVELY, IN THE AMARGOSA)
GROUND WATER BASIN, NYE COUNTY,)
NEVADA.)

RULING

GENERAL

I.

Application 52888 was filed on January 26, 1989 by Industrial Mineral Ventures, Inc. to change the point of diversion, place of use and manner of use of 2.567 c.f.s. of water from an underground source heretofore appropriated under permit 14059, Certificate 5156. The proposed use is for mining and milling within section 29, T.17S., R.48E., MDB&M. The existing use is for irrigation within the N1/2 SW1/4 Section 1, T.17S., R.48E., MDB&M. The existing point of diversion is described as being within the NW1/4 SW1/4 Section 1, T.17S., R.48E., MDB&M. The proposed point of diversion is described as being within the NE1/4 NW1/4 Section 12, T.17S., R.48E., MDB&M.¹

II.

Application 52289 was filed on January 26, 1989 by Industrial Mineral Ventures, Inc. to change the point of diversion, place of use and manner of use of 1.08 c.f.s. of water from an underground source heretofore appropriated under permit 27813, Certificate 9309. The proposed use is for mining and milling within Section 29, T.17S., R.48E., MDB&M. The existing use is for irrigation of 125.6 acres within the SW1/4, Section 1, T.17S., R.48E., MDB&M. The

1 States Exhibit No. 2

existing point of diversion is described as being within the NW1/4 SW1/4 Section 1, T.17S., R.48E., MDB&M. The proposed point of diversion is described as being within the NE1/4 NW1/4 Section 12, T.17S., R.48E., MDB&M.²

III.

Applications 52888 and 52889 were timely protested on March 20, 1989 by Owen R. Williams on behalf of the United States National Park Service, on the grounds that, "the application if granted, may cause injury to reserved and appropriated water rights of the United States Death Valley National Monument, including the NPS reserved water rights at Devils Hole, a detached unit of the Death Valley National Monument. Therefore the Protestant requests that the change applications be denied".³

IV.

Applications 52888 and 52889 became ready for action on April 30, 1989.⁴

FINDINGS OF FACT

I.

A public administrative hearing in the matter of the subject applications to change was held before representatives of the State Engineer on August 16, 1989 in Sparks, Nevada after proper notice was given to all parties with standing.⁵

² States Exhibit No. 3

³ States Exhibit No. 5, 6

⁴ Public Records of the State Engineer

⁵ States Exhibit No. 1 Transcript of hearing is public record in the office of the State Engineer.

II.

The applicant contends that a granting of change applications 52888 and 52889 would not be harmful to existing National Park Service water rights within the Death Valley National Monument, in particular the Devil's Hole Sub Unit, because the secondary recharge estimate for the proposed manner of use, mining and milling is significantly greater than the estimate for the existing manner of use irrigation. A witness testifying on behalf of the applicant estimated the secondary recharge for mining and milling to be in the vicinity of 75% to 80% of the total volume pumped. Secondary recharge for irrigation in the Amargosa Region is generally estimated to be approximately 20% of total volume pumped.⁶

The applicant contends that the proposed change in manner of use from irrigation to mining and milling would represent an actual benefit to the groundwater basin.⁷

III.

By a letter dated August 10, 1989 and by subsequent testimony received at the hearing, the National Park Service offered to withdraw its protests to the approval of the change applications, if IMV complied with a series of conditions to be included within the permit terms.⁸

IV.

The Applicant agreed to comply with said conditions.⁹

⁶ Transcript; pages 50-55

⁷ Transcript; pages 37, 50-61

⁸ States Exhibit No. 7

⁹ Transcript; pages 53-55

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter.¹⁰

II.

The State Engineer is prohibited from approving an application to change the point of diversion and manner of use if the application.¹¹

1. Conflicts with existing rights on the source
2. Is detrimental to the public interest

III.

Applications 52888 and 52889 should be approved subject to the following terms and conditions:

A. That the applicant provide verification, through a means acceptable to the Nevada State Engineer, that a reduction in the consumptive use of water covered by Applications 52888 and 52889 shall be effected such that a substantial amount of said water is secondarily recharged to the Amargosa ground water basin.

B. That IMV and any successors in interest to the water rights described by Applications 52888 and 52889, shall be limited to the duties of water described above in any future change applications.

C. That the permittee shall install and maintain such water measurement devices, recording devices, content gauges, and inlet and outlet measurement devices, as the case may be, as are deemed suitable by the Office of the State Engineer. The data produced by said devices shall be provided to the Office of the State Engineer and the Superintendent at Death Valley National Monument on or about the last day of each calendar month during which there occurs any diversion of water covered by the terms of these permits.

¹⁰ NRS Chapter 533 and 534

¹¹ NRS Chapter 533.370 (3)

IV.

The record of evidence and testimony shows no evidence that the approval of the subject applications would not be in the public interest.

RULING

The protest to Applications 52888 and 52889 is herewith overruled; and the subject applications will be approved subject to payment of statutory fees and the terms and conditions set forth in conclusion III herein above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", is written over a large, hand-drawn oval. The signature is fluid and cursive.

Peter G. Morros
State Engineer

PGM/LCR/pm

Dated this 28th day of
December, 1989.