

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 53101)  
AND 53102 FILED TO APPROPRIATE)  
UNDERGROUND WATER WITHIN THE BIG)  
SMOKY VALLEY-TONOPAH FLAT)  
GROUNDWATER BASIN, NYE COUNTY,)  
STATE OF NEVADA. )

RULING

GENERAL

I.

Application 53101 was filed on April 5, 1989, by J.M. (Mike) Peckenpaugh to appropriate 3.0 c.f.s. of water from an underground source for mining and milling purposes. The point of diversion is described as being within the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 16, T.8N., R.43E., M.D.B.&M.<sup>1</sup>

Application 53102 was filed on April 5, 1989, by J.M. (Mike) Peckenpaugh to appropriate 3.0 c.f.s. of water from an underground source for mining and milling purposes. The point of diversion is described as being within the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 22, T.8N., R.43E., M.D.B.&M.<sup>1</sup>

The place of use of Applications 53101 and 53102 is described as being all of Sections 7 and 8, the W $\frac{1}{2}$  and SE $\frac{1}{4}$  of Section 9, the SW $\frac{1}{4}$  of Section 10, the S $\frac{1}{2}$  of Section 14, the SE $\frac{1}{4}$  and the W $\frac{1}{2}$  of Section 15, all of Sections 16, 17, 18, 19, 20, 21 and 22 and the N $\frac{1}{2}$  of Section 23, all being situated in T.8N., R.43E., M.D.B.&M.<sup>1</sup>

The total volume of water proposed to be used under the subject applications is 200 million gallons per year.<sup>1</sup>

II.

Application 53101 was timely protested<sup>1</sup> by Robert Bottom of Tonopah, Nevada on June 12, 1989, on the following grounds, to wit: "Drought years has dropped the water level in ponds upstream from this application. This low water has restricted our mining operations upstream."

Protestant Robert Bottom requested that Application 53101 be issued subject to prior rights.

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<sup>1</sup> Public record in the State Engineer's office under Application 53101 and 53102.

Application 53102 was timely protested<sup>1</sup> by Robert Bottom of Tonopah, Nevada on June 12, 1989, on the following grounds, to wit: "Drought years has dropped the water level in our ponds upstream limiting our mining operations - (special notice should be taken on this application, as we have a small operation on a pond only 1400 ft. upstream.)"

Protestant Robert Bottom requested that Application 53102 be issued subject to prior rights.

### III.

Deeds were filed in the State Engineer's office on August 10, 1988, requesting a transfer of Permit 12523, Certificate 3398 and Permit 12534, Certificate 3399 to Robert Bottom.<sup>2</sup>

Permit 12523 was issued Certificate of Appropriation No. 3398 on January 18, 1950, for 2.0 c.f.s. of water for mining purposes. The point of diversion is described as being a pond within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 23, T.8N., R.43E., M.D.B.&M.<sup>2</sup>

Permit 12534 was issued Certificate of Appropriation No. 3399 on January 18, 1950, for 2.0 c.f.s. of water for washing placer gravel, i.e., mining purposes. The point of diversion is described as being a pond within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 23, T.8N., R.43E., M.D.B.&M.<sup>3</sup>

The respective Proofs of Application of Water to Beneficial Use filed under Permits 12523 and 12534 both state that the ponds are sited "in Manhattan Gulch."<sup>2, 3</sup>

### FINDINGS OF FACT

#### I.

Applications 53101 and 53102 propose to divert underground water for beneficial use in the Big Smoky Valley-Tonopah Flat Groundwater Basin.

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<sup>2</sup> Public record in the State Engineer's office under Permit 12523.

<sup>3</sup> Public record in the State Engineer's office under Permit 12534.

II.

The Big Smoky Valley-Tonopah Flat Groundwater Basin has been designated by the State Engineer as a basin in need of additional administration.<sup>4</sup>

III.

The proposed point of diversion under Application 53102 is over one-quarter mile from the source under Permit 12523, Certificate 3398. The proposed point of diversion under Application 53102 is over 2,500 feet from the source under Permit 12534, Certificate 3399.

The proposed point of diversion under Application 53101 is over 7,000 feet from the source under Permit 12523, Certificate 3398. The proposed point of diversion under Application 53101 is over 8,000 feet from the source under Permit 12534, Certificate 3399.

IV.

Manhattan Gulch is an ephemeral stream channel draining a small water shed on the west side of the Toquima Mountain Range located in central Nevada. Surface water is present in significant quantities only during thunderstorm events and during thaw of winter snowpack.

V.

The proposed point of diversion under Application 53102 is located within one-quarter mile of Manhattan Gulch.

VI.

The State of Nevada Regulations for Drilling Water Wells states under Section 5 paragraph 1 that no well located within one-quarter mile of a stream, river or canal shall have perforations in the production casing above 100 feet.

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<sup>4</sup> Public record in the office of the State Engineer: Order 725, May 14, 1979. NRS Chapter 534.

VII.

The applicant under 53101 and 53102 states in correspondence to the State Engineer's office that the proposed wells will have a total depth of 400 to 500 feet.<sup>1</sup>

VIII.

The protestant does not request the denial of Applications 53101 and 53102 only that they be issued "subject to prior rights".<sup>1</sup>

**CONCLUSIONS**

I.

Pursuant to NRS Chapters 533 and 534, the State Engineer has jurisdiction of the parties and of the subject matter of this action.

II.

The State Engineer shall not approve an application to appropriate if:<sup>5</sup>

- A. There is no unappropriated water in the proposed source of supply.
- B. The proposed use conflicts with existing rights.
- C. The proposed use threatens to prove detrimental to the public interest.

III.

The approval of Applications 53101 and 53102 will not be detrimental to the public interest.

**RULING**

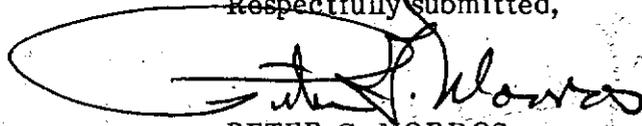
The protests to Application 53101 and 53102 are herewith upheld:

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<sup>5</sup> NRS 533.370(3).

1. Applications 53101 and 53102 will be approved subject to existing rights upon receipt of the statutory fees.
2. Each application will be approved for 200 million gallons per year with the express understanding that the total combined annual duty of Applications 53101 and 53102 shall not exceed 200 million gallons per year.
3. The proposed well under Application 53102 shall not be perforated from ground level to 100 feet in depth.
4. Monthly reports shall be submitted to the State Engineer for water used from each well and a static water level in each well.

Respectfully submitted,

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

PETER G. MORROS  
State Engineer

PGM/JSF/bk

Dated this 14th day of  
February, 1990.