

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

IN THE MATTER OF APPLICATIONS 48347,)
48352, 48353, 48362, 48363, 48366 AND)
48367 FILED TO CHANGE THE PLACE OF USE)
AND POINT OF DIVERSION OF PORTIONS OF)
THE WATERS OF AN UNDERGROUND SOURCE)
HERETOFORE APPROPRIATED UNDER)
APPLICATIONS 31424, 31427, 31434 AND)
31436, APPLICATION 47632 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE IN RAILROAD VALLEY)
(NORTHERN PART), NYE COUNTY, NEVADA.)

RULING

GENERAL

I.

Application 31424 was filed on May 3, 1977, by Last Chance Mining Co., Inc. to appropriate 10.8 c.f.s. of water from an underground source for irrigation purposes on 640 acres in Section 36, T.5N., R.54E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 36, T.5N., R.54E., M.D.B.&M.¹

II.

Application 31427 was filed on May 3, 1977, by Last Chance Mining Co., Inc. to appropriate 10.8 c.f.s. of water from an underground source for irrigation purposes on 640 acres in Section 11, T.4N., R.54E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 11, T.4N., R.54E., M.D.B.&M.¹

III.

Application 31434 was filed on May 3, 1977, by Tenabo Gold Mining Co., Inc. to appropriate 10.8 c.f.s. of water from an underground source for irrigation and domestic purposes on 640 acres in Section 13, T.4N., R.54E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 13, T.4N., R.54E., M.D.B.&M.¹

¹ Public record in the office of the State Engineer.

IV.

Application 31436 was filed on May 3, 1977, by Tenabo Gold Mining Co., Inc. to appropriate 10.8 c.f.s. of water from an underground source for irrigation and domestic purposes on 640 acres in Section 6 T.4N., R.55E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 6, T.4N., R.55E., M.D.B.&M.¹

V.

Application 47632 was filed on January 30, 1984, by Central Nevada Water Co. to appropriate 5.4 c.f.s. of water from an underground source for irrigation and domestic purposes on 320 acres located in N1/2 Section 16, T.4N., R.54E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 16, T.4N., R.54E., M.D.B.&M.¹

VI.

Application 48347 was filed on September 6, 1984, by Mary Ann Connealy to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore appropriated under Application 31424. The existing point of diversion is described as being within the NW1/4 NE1/4 Section 36, T.5N., R.54E., M.D.B.&M., and the existing place of use is 640 acres located in Section 36, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SE1/4 Section 3, T.4N., R.54E., M.D.B.&M., and the proposed place of use is 320 acres located in the SE1/4 Section 3, and SW1/4 Section 2, T.4N., R.54E., M.D.B.&M. No change is proposed in the manner of use.¹

VII.

Application 48352 was filed on September 6, 1984, by Roger F. Diercks to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore appropriated under Application 31427. The existing point of diversion is described as being within the NE1/4 NW1/4

Section 11, T.4N., R.54E., M.D.B.&M., and the existing place of use is 640 acres located in Section 11, T.4N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 NW1/4 Section 16, T.4N., R.54E., M.D.B.&M., and the proposed place of use is 320 acres located in the N1/2 Section 16, T.4N., R.54E., M.D.B.&M. The existing and proposed manner of use is irrigation and domestic.¹

VIII.

Application 48353 was filed on September 6, 1984 by Rebecca Diercks to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore appropriated under Application 31427. The existing point of diversion is described as being within the NE1/4 NW1/4 Section 11, T.4N., R.54E., M.D.B.&M., and the existing place of use is 640 acres located in Section 11, T.4N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 16, T.4N., R.54E., M.D.B.&M., and the proposed place of use is 320 acres located in the S1/2 Section 16, T.4N., R.54E., M.D.B.&M. No change is proposed in the of use manner.¹

IX.

Application 48362 was filed on September 6, 1984, by Mary A. Boyer to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore appropriated under Application 31434. The existing point of diversion is described as being within the NW1/4 NE1/4 Section 13, T.4N., R.54E., M.D.B.&M., and the existing place of use is 640 acres located in Section 13, T.4N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 NW1/4 Section 7, T.3N., R.53E., M.D.B.&M., and the proposed place of use is 320 acres located in the N1/2 Section 7, T.3N., R.53E., M.D.B.&M. No change is proposed in the manner of use.¹

X.

Application 48363 was filed on September 6, 1984, by Gary D. Boyer to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore appropriated under Application 31434. The existing point of diversion is described as being within the NW1/4 NE1/4 Section 13, T.4N., R.54E., M.D.B.&M., and the existing place of use is 640 acres located in Section 13, T.4N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 NW1/4 Section 8, T.3N., R.53E., M.D.B.&M., and the proposed place of use is 320 acres located in the N1/2 Section 8, T.3N., R.53E., M.D.B.&M. No change is proposed in the manner of use.¹

XI.

Application 48366 was filed on September 6, 1984, by Frank D. Diercks to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore appropriated under Application 31436. The existing point of diversion is described as being within the NE1/4 NW1/4 Section 6, T.4N., R.55E., M.D.B.&M., and the existing place of use is 640 acres located in Section 6, T.4N., R.55E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 NW1/4 Section 14, T.4N., R.53E., M.D.B.&M., and the proposed place of use is 320 acres located in the N1/2 Section 14, T.4N., R.53E., M.D.B.&M. No change is proposed in the manner of use.¹

XII.

Application 48367 was filed on September 6, 1984, by Irene Diercks to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore appropriated under Application 31436. The existing point of diversion is described as being within the NE1/4 NW1/4 Section 6, T.4N., R.55E., M.D.B.&M., and the existing place of use is 640 acres located in Section 6, T.4N., R.55E., M.D.B.&M. The proposed point of diversion is described as being within the

NE1/4 SW1/4 Section 14, T.4N., R.53E., M.D.B.&M., and the proposed place of use is 320 acres located in the S1/2 Section 14, T.4N., R.53E., M.D.B.&M. No change is proposed in the manner of use.¹

XIII.

Applications 48347, 48352, 48353, 48362, 48363, 48366 and 48367 were timely protested on February 1, 1985, by Roger Hockersmith on the following grounds:¹

"On or about November 11, 1983, Roger Hockersmith entered into an agreement with the agent of several water applicants to purchase their water applications. Said applications included the underlying applications from whence the herein protested application originated. (Application Nos. 31,424 through 31,438, excluding 31,428 and 31,432)

Hockersmith thereafter was joined by a third party who was to assist in the financing and development of a project conceived by Hockersmith and involving said water applications. Said third party executed a non-disclosure agreement whereby it agreed not to use any proprietary information accumulated by Hockersmith and utilized by him in the creation of the project.

Notwithstanding said non-disclosure agreement, said third party, under the guise of an amendment of said agreement of November 11, 1983, named itself as the purchaser of said water applications; acquired quitclaim deeds for said water applications from the aforesaid agent; and usurped and put into operation Hockersmith's said project for the sole use and benefit of said third party.

Hockersmith is informed and believes and therefore alleges that the above named applicant is not a bona-fide purchaser for value and that he, Hockersmith, is the true owner of the protested application.

Hockersmith is contemplating an action to determine ownership and respectfully requests that the State Engineer take no action on the above named application for change of point of diversion and place of use until the true owner of said water application is determined."

XIV.

Water Resources-Reconnaissance Series Report 60, titled "Water-Resources Appraisal of Railroad and Penoyer Valleys, East-Central Nevada", was prepared cooperatively by the Geological Survey, U.S. Department of the Interior, and State of Nevada, Department of Conservation and Natural Resources. For the purposes of this report, Railroad Valley was divided into northern and southern parts.²

XV.

A public administrative hearing was held before the State Engineer on May 2, 1985. Evidentiary presentations were made by the applicants and protestants in the matter set forth herein.³

FINDINGS OF FACT

I.

The perennial yield of a hydrologic system is the maximum amount of water of usable chemical quality that can be consumed economically each year for an indefinite period of time. If the perennial yield is continually exceeded, ground water levels will decline until the ground water reservoir is depleted of water of usable quality or until the pumping lifts become uneconomical to maintain. Perennial yield cannot exceed the natural replenishment to an area indefinitely, and ultimately is limited to the maximum amount of natural discharge that can be salvaged for beneficial use.²

² Water Resources-Reconnaissance Series Report 60.

³ See public administrative hearing transcript of May 2, 1985.

II.

For long-term natural or near-natural conditions, ground water inflow to and outflow from an area are about equal, assuming that climate conditions remain reasonably constant. For Railroad Valley, Northern Part, the estimate of ground water inflow and outflow which is considered to be the perennial yield of the hydrologic ground water basin is 75,000 acre-feet annually.²

III.

Permits and certificates have been issued under existing rights for less than 24,575 acre-feet annually of ground water within Railroad Valley, Northern Part.¹ Therefore, additional water is available for appropriation within the Railroad Valley, Northern Part, Hydrologic Ground Water Basin.

IV.

In a letter dated July 8, 1980, the State Engineer informed the Bureau of Land Management and the Division of State lands that additional water was available for appropriation within Railroad Valley, Northern Part.¹

V.

By letters dated July 20, 1990, the United States Department of Interior, Bureau of Land Management, issued entry on seven (7) Desert Land Entries which correspond with Applications 48347, 48352, 48353, 48362, 48363, 48366 and 48367. The Bureau of Land Management entries are:¹

<u>BLM</u> <u>ENTRY NO.</u>	<u>DATE</u> <u>ISSUED</u>	<u>NAME</u>	<u>LOCATION</u>
N-40990	7/20/90	Mary Ann Connealy	T.4N., R.54E., Sec. 2 SW1/4 Sec. 3 SE1/4
N-40269	7/20/90	Roger F. Diercks	T.4N., R.54E., Sec. 16 N1/2
N-40270	7/20/90	Rebecca J. Diercks	T.4N., R.54E., Sec. 16 S1/2

<u>BLM</u> <u>ENTRY NO.</u>	<u>DATE</u> <u>ISSUED</u>	<u>NAME</u>	<u>LOCATION</u>
N-40258	7/20/90	Mary A. Boyer	T.3N., R.53E., Sec. 7 Lots 1, 2, NE1/4 E1/2 NW1/4
N-40257	7/20/90	Gary D. Boyer	T.3N., R.53E., Sec. 8 N1/2
N-40263	7/20/90	Frank D. Diercks	T.4N., R.53E., Sec. 14 N1/2
N-40264	7/20/90	Irene Diercks	T.4N., R.53E., Sec. 14 S1/2

VI.

In a letter dated March 21, 1990, to the Department of Conservation and Natural Resources, Division of State Lands, the State Engineer's Office requested written notification of any filings of Carey Act applications by anyone in Sections 7 and 16, T.4N., R.54E., M.D.B.&M.¹

VII.

In a letter dated May 4, 1990, to the State Engineer's Office, the Division of State Lands found no Carey Act applications on file for land within Sections 7 and 16, T.4N., R.54E., M.D.B.&M.

VIII.

Desert Land Entry N-40269 for Roger F. Diercks was allowed by the Bureau of Land Management for 320 acres of land located in the N1/2 Section 16, T.4N., R.54E., M.D.B.&M., corresponding with Application 48352. No Desert Land Entry for Central Nevada Water Co. was allowed by the Bureau of Land Management for 320 acres of land located in the N1/2 Section 16, T.4N., R.54E., M.D.B.&M., corresponding with Application 47632.

IX.

A quitclaim deed dated July 5, 1984, was filed within the office of the State Engineer on August 20, 1984, quitclaiming Applications 31424, 31427, 31434 and 31436 to Nevada Agri-Business Corporation of Reno, Nevada. Subsequently an original notarized deed dated February 19, 1985, transferred 1/2 interest in Application 31424 to Robert E. Connealy and 1/2 interest to Mary Ann Connealy; 1/2 interest in Application 31427 to Roger F. Diercks and 1/2 interest to Rebecca Diercks; 1/2 interest in Application 31434 to Gary D. Boyer and 1/2 interest to Mary A. Boyer; and 1/2 interest in Application 31436 to Frank D. Diercks and 1/2 interest to Irene Diercks.⁴

X.

At the administrative hearing held before the State Engineer on May 2, 1985, no evidence was presented by the protestant to substantiate the grounds of the protest.³ The title of ownership to water rights Applications 31424, 31427, 31434 and 31436 and corresponding Applications to change 48347, 48352, 48353, 48362, 48363, 48366 and 48367, as reflected on the records of the State Engineer's office, corresponds to the respective Desert Land Entries on the records of the Bureau of Land Management. The applicants under these subject applications to change have demonstrated that they control the land on which they plan to place the water to beneficial use. The applicant under Application 47632 has not demonstrated that he controls the land on which he plans to place the water to beneficial use.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.⁵

⁴ See deeds on file under Application 31424, 31427, 31434 and 31436.

⁵ NRS Chapters 533 and 534.

II.

The deeds of transfer on file with the State Engineer are in proper form and a transfer of title of Applications 31424, 31427, 31434 and 31436 to the applicants under Applications 48347, 48352, 48353, 48362, 48363, 48366 and 48367 have been made on the records on file in the State Engineer's office.¹

III.

There is no record of evidence to support the grounds of the protest, therefore, the State Engineer concludes that the protests have no merit.

IV.

Application 47632 filed by Central Nevada Water Co. requests water rights be granted on lands the applicant has no control of and cannot put to beneficial use.

V.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁶

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

VI.

There is unappropriated water at the source and the granting of permits under Applications 31424, 31427, 31434, 31436, 48347, 48352, 48353, 48362, 48363, 48366 and 48367 would not adversely affect existing rights or be detrimental to the public interest.

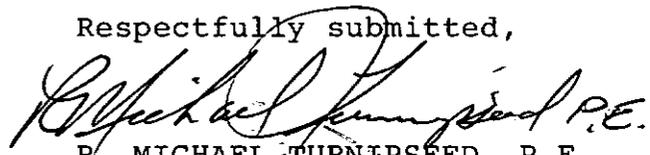
⁶ NRS 533.370.

RULING

The permits will be granted for 31424, 31427, 31434 and 31436 upon payment of permit fees. The protest to applications 48347, 48352, 48353, 48362, 48363, 48366 and 48367 are herewith overruled and permits will be granted for applications 48347, 48352, 48353, 48362, 48363, 48366 and 48367 upon payment of permit fees.

Application 47632 is hereby denied on the grounds that to grant an application for irrigation purposes on lands that the applicant does not own or control and cannot use, would not be in the public interest and welfare.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/DJL/pm

Dated this 9th day of
November, 1990