

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

IN THE MATTER OF APPLICATION 66784)
FILED TO CHANGE THE POINT OF)
DIVERSION, PLACE OF USE, AND MANNER)
OF USE OF WATER PREVIOUSLY APPROPRIATED)
AND APPLICATION 66785 FOR AN ADDITIONAL)
POINT OF DIVERSION FROM AN UNDERGROUND)
SOURCE WITHIN GARNET VALLEY)
(DRY LAKE VALLEY) GROUNDWATER BASIN)
(216), CLARK COUNTY, NEVADA.)

RULING

#5017

GENERAL

I.

Application 66784 was filed on August 25, 2000, by Great Star Cement Corporation to change the point of diversion, place of use, and manner of use of 1.34 cubic feet per second (cfs), not to exceed 58.0 million gallons annually (mga), of water previously appropriated under Permit 50663. Application 66784 proposes to change the manner of use from mining and milling within the N $\frac{1}{2}$ of Section 8 and the S $\frac{1}{2}$ of Section 5, T.18S., R.64E., M.D.B.&M., to quasi-municipal purposes within parts of Sections 32 and 33, T.17S., R.63E., M.D.B.&M., parts of Sections 3, 4, 5, 8, 9, 10, 11, 13, 14, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, T.18S., R.63E., M.D.B.&M. and parts of Sections 2 through 9, inclusive, T.19S., R.63E., M.D.B.&M. The proposed point of diversion is described, as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, T.18S., R.63E., M.D.B.&M., and the existing point of diversion is located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T.18S., R.64E., M.D.B.&M.¹

¹ File No. 66784, official records in the office of the State Engineer.

II.

Application 66785 was filed on August 25, 2000, by Great Star Cement Corporation for the diversion of 1.34 cfs, not to exceed 58.0 mga. Application 66785 was filed for an additional point of diversion in conjunction with Application 66784, for a total combined duty of 58.0 mga. The proposed manner of use is for quasi-municipal purposes. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 32, T.17S., R.63E., M.D.B.&M. The place of use is the same as that described under Application 66784.²

III.

Applications 66784 and 66785 were timely protested by the United States Department of the Interior, National Park Service (NPS) on the following grounds:¹

1. There is no water available for appropriation because committed water resources exceed groundwater recharge.
2. The approval and development of the appropriation proposed by this application will impair the water rights of the United States, because:
 - A. The proposed appropriation, in combination with other appropriations and withdrawals proposed by Dry Lake Water L.L.C. (Applications Nos. 64037, 64038, 64039, 64040, 64041, and 64045), will reduce the discharge of the Muddy River. The United States' senior water right and other existing rights to the Muddy River would be injured, if the appropriation is approved and developed.
 - B. The proposed appropriation, in combination with existing appropriations and pending applications in Garnet Valley and adjacent hydrographic basins, if approved and developed, could reduce the discharge of Lake Mead NRA springs, because of the large potential withdrawal rate. The drawdown caused by such

² File No. 66785, official records in the office of the State Engineer.

large withdrawals would extend to capture groundwater that naturally discharges through the springs.

- C. The effects of the appropriation proposed by this application, when combined with other existing and proposed appropriations, could impair the senior water rights of Lake Mead NRA more quickly and/or to a degree greater than the withdrawal proposed under this application alone.
3. The public interest would not be served by granting this application, because:
 - A. The water and water-related resources in the nationally important Lake Mead NRA would be diminished or impaired, as a result of the appropriation proposed by this application.
 - B. The application proposes to use water on lands where the applicant does not control both the proposed well location and the proposed place of use.
 - C. The proposed place of use is currently served by an existing permit. At least six additional applications currently pending before the Nevada State Engineer propose to provide water to the same place of use.

FINDINGS OF FACT

I.

Application 66784 requests a change in the point of diversion, place of use, and manner of use of an existing permitted water right. Permit 50663 was issued for an annual duty of 58.0 mga for mining and milling purposes. The State Engineer finds that the annual duty of water proposed for transfer under Application 66784 is limited to 58.0 mga.

II.

Application 66785 is a request for an additional point of diversion to be used as a reliable source of water in conjunction with Application 66784, for a total combined duty not to exceed 58.0 mga. The State Engineer finds that

the annual duty of water proposed under Applications 66784 and 66785 of 58.0 mga does not increase the appropriations within the Garnet Valley Groundwater Basin.

III.

The NPS alleges that there is no water available for appropriation. Application 66784 requests to change the point of diversion, place of use, and manner of use of an existing, valid, permitted water right. Nevada Revised Statutes § 533.325 provides that a person may change the point of diversion, place of use, and manner of use of water already appropriated which is statutorily defined to include water for whose appropriation the State Engineer has issued a permit but which has not been applied to the intended use before an application to change the point of diversion, place of use, and manner of use is made.³ The State Engineer finds that whether or not water has actually been placed to beneficial use under the existing permit before the change application was filed is irrelevant and the NPS' contentions are not based on law and lack merit.

IV.

The NPS alleges that the proposed appropriation in Garnet Valley would come from storage and constitute groundwater mining. The regional flow system of Garnet Valley, and like most of southern Nevada, consists of alluvial (valley fill) and carbonate-rock aquifers. There is not a great deal of technical information on the inter-connectivity of the two systems but it is generally accepted that they are connected. It is suspected that water flows from the carbonate-rock to the alluvial aquifer in Garnet Valley because water level declines have not been

³ NRS § 533.324.

seen with the appropriations now permitted. The State Engineer finds that the NPS has not provided any factual information that supports their contentions that the groundwater is being mined from Garnet Valley.

CONCLUSIONS OF LAW

I.

The State engineer has jurisdiction over the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:⁵

- a. The proposed use conflicts with existing rights; or
- b. The proposed use threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the NPS's contention that there is no water available for appropriation lacks merit and is in direct contradiction to the provisions of the Nevada Water Law that provide for the ability to change the point of diversion, place of use or manner of use of water already appropriated.

IV.

The State Engineer concludes the granting of change applications on water already appropriated from this source will not conflict with any existing rights of the NPS nor threaten to prove detrimental to the public interest as this application seeks to change water already appropriated.

⁴ NRS chapters 533 and 534.

⁵ NRS chapter 533.370(3).

V.

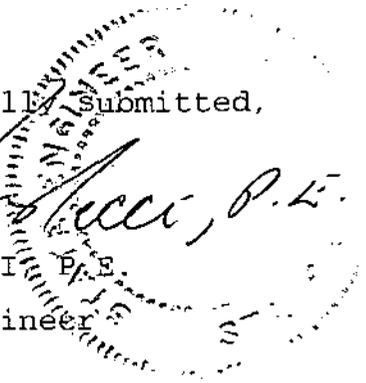
Application 66785 does not propose to appropriate additional water from the Garnet Valley Groundwater Basin, but act as a reliable source of water to meet the demand of 58.0 mga from either point of diversion under Applications 66784 and 66785. The State Engineer concludes that Application 66785 is not a new appropriation within Garnet Valley and that the total combined duty of Applications 66784 and 66785 will not exceed 58.0 mga.

RULING

The protests to Applications 66784 and 66785 are hereby overruled and Applications 66784 and 66785 are granted subject to existing rights and the payment of statutory fees.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer



HR/KWH/hf

Dated this 2nd day of

May, 2001.