

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

IN THE MATTER OF APPLICATIONS)
67712, 67717 AND 67719, FILED TO)
CHANGE THE POINT OF DIVERSION AND)
MANNER OF USE OF WATER PREVIOUSLY)
APPROPRIATED AND APPLICATIONS)
67711, 67713, 67714, 67715, 67716,)
67718 AND 67720, FILED TO CHANGE)
THE MANNER OF USE OF WATER)
PREVIOUSLY APPROPRIATED WITHIN THE)
GARNET VALLEY (DRY LAKE VALLEY))
HYDROGRAPHIC BASIN (216), CLARK)
COUNTY, NEVADA.)

RULING

#5085

GENERAL

I.

Application 67711 was filed on June 28, 2001, by Republic Environmental Technologies, Inc., to change the manner of use of 0.0004 cubic feet per second (cfs), not to exceed 0.11 acre-feet annually (afa), a portion of the underground water previously appropriated under Permit 53322. Application 67711 proposes to change the manner of use from industrial and domestic to industrial and domestic (including power plant cooling). The proposed point of diversion is described as being located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T.18S., R.64E., M.D.B.&M. The proposed place of use is described as being located within portions of the S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 18 and portions of the W $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 19 all within T.18S., R.64E., M.D.B.&M.¹

II.

Application 67712 was filed on June 28, 2001, by Republic Environmental Technologies, Inc., to change the point of diversion and manner of use of 0.25 cfs, not to exceed 68.5 afa, a portion of the underground water previously appropriated under Permit 59237, Certificate 15391. Application 67712 proposes to change

¹ File No. 67711, official records in the office of the State Engineer.

the manner of use from industrial and domestic to industrial and domestic (including power plant cooling). The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T.18S., R.64E., M.D.B.&M.² The proposed place of use is the same as described under Application 67711.

III.

Application 67713 was filed on June 28, 2001, by Republic Environmental Technologies, Inc., to change the manner of use of 0.0004 cfs, not to exceed 0.11 afa, a portion of the underground water previously appropriated under Permit 60624. Application 67713 proposes to change the manner of use from industrial and domestic to industrial and domestic (including power plant cooling). The point of diversion is described as being located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T.18S., R.64E., M.D.B.&M. The proposed place of use is the same as described under Application 67711.³

IV.

Application 67714 was filed on June 28, 2001, by Republic Environmental Technologies, Inc., to change the manner of use of 0.0004 cfs, not to exceed 0.11 afa, of the underground water previously appropriated under Permit 63585. Application 67714 proposes to change the manner of use from industrial and domestic to industrial and domestic (including power plant cooling). The point of diversion is described as being located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T.18S., R.64E., M.D.B.&M. The proposed place of use is the same as described under Application 67711.⁴

V.

Application 67715 was filed on June 28, 2001, by Republic Environmental Technologies, Inc., to change the manner of use of 0.1488 cfs, not to exceed 40.78 afa, of the underground water

² File No. 67712, official records in the office of the State Engineer.

³ File No. 67713, official records in the office of the State Engineer.

⁴ File No. 67714, official records in the office of the State Engineer.

previously appropriated under Permit 63586. Application 67715 proposes to change the manner of use from industrial and domestic to industrial and domestic (including power plant cooling). The point of diversion is described as being located within the SE¼ SE¼ of Section 7, T.18S., R.64E., M.D.B.&M. The proposed place of use is the same as described under Application 67711.⁵

VI.

Application 67716 was filed on June 28, 2001, by Republic Environmental Technologies, Inc., to change the manner of use of 0.0135 cfs, not to exceed 3.7 afa, a portion of the underground water previously appropriated under Permit 63587. Application 67716 proposes to change the manner of use from industrial and domestic to industrial and domestic (including power plant cooling). The point of diversion is described as being located within the NW¼ NE¼ of Section 19, T.18S., R.64E., M.D.B.&M. The proposed place of use is the same as described under Application 67711.⁶

VII.

Application 67717 was filed on June 28, 2001, by Republic Environmental Technologies, Inc., to change the point of diversion and manner of use of 0.0869 cfs, not to exceed 23.8 afa, a portion of the underground water previously appropriated under Permit 63587. Application 67717 proposes to change the manner of use from industrial and domestic to industrial and domestic (including power plant cooling). The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 18, T.18S., R.64E., M.D.B.&M. The proposed place of use is the same as described under Application 67711.⁷

⁵ File No. 67715, official records in the office of the State Engineer.

⁶ File No. 67716, official records in the office of the State Engineer.

⁷ File No. 67717, official records in the office of the State Engineer.

VIII.

Application 67718 was filed on June 28, 2001, by Republic Environmental Technologies, Inc., to change the manner of use of 0.29 cfs, not to exceed 194 afa, of the underground water previously appropriated under Permit 63588. Application 67718 proposes to change the manner of use from industrial and domestic to industrial and domestic (including power plant cooling). The point of diversion is described as being located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T.18S., R.64E., M.D.B.&M. The proposed place of use is the same as described under Application 67711.⁸

IX.

Application 67719 was filed on June 28, 2001, by Republic Environmental Technologies, Inc., to change the point of diversion and manner of use of 0.25 (cfs), not to exceed 68.5 afa, of the underground water previously appropriated under Permit 63589. Application 67719 proposes to change the manner of use from industrial and domestic to industrial and domestic (including power plant cooling). The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T.18S., R.64E., M.D.B.&M. The proposed place of use is the same as described under Application 67711.⁹

X.

Application 67720 was filed on June 28, 2001, by Republic Environmental Technologies, Inc., to change the manner of use of 0.2496 cfs, not to exceed 68.39 afa, of the underground water previously appropriated under Permit 63590. Application 67720 proposes to change the manner of use from industrial and domestic to industrial and domestic (including power plant cooling). The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T.18S., R.64E., M.D.B.&M. The proposed place of use is the same as described under Application 67711.¹⁰

⁸ File No. 67718, official records in the office of the State Engineer.

⁹ File No. 67719, official records in the office of the State Engineer.

¹⁰ File No. 67720, official records in the office of the State Engineer.

XI.

Applications 67711 through 67720, inclusive, were timely protested by the United States Department of the Interior, National Park Service (NPS) on the grounds that approval of the above-listed change applications may adversely affect water rights in the Lake Mead National Recreation Area (LMNRA) by: (1) lowering the water table in the Garnet Valley basin fill; (2) divert ground-water through-flow from adjacent basins thereby reducing spring discharge within the LMNRA; (3) the applicant has previously used more water than was appropriated under the water right sought to be changed and must be required to adhere to permit limitations; (4) monitoring and mitigation measures are necessary and the applicant should be required to record daily pumping records and continuous water level measurements and possibly drill additional monitoring wells, and; (5) it is not in the public interest to grant water right applications that may impact publically held water resources represented by permits in good standing.¹⁻¹⁰

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.325 provides that a person may change the point of diversion, place of use and manner of use of "water already appropriated". As used in NRS § 533.325, "water already appropriated" includes water for which the State Engineer has issued a permit.¹¹ The State Engineer finds that Change Applications 67711, 67713 through 67716, 67718 and 67720 request to change only the manner of use and Change Applications 67712, 67717 and 67719 request to change both the point of diversion and manner of use, respectively, of existing, valid water rights represented by permits in good standing.¹⁻¹⁰

¹¹ NRS § 533.324.

II.

The NPS alleges that granting the subject change applications may lower the water table in the Garnet Valley basin and may reduce spring discharge within the LMNRA. The State Engineer finds that an eight page report titled REPUBLIC ENVIRONMENTAL TECHNOLOGIES WATER USE PROPOSAL, dated September 27, 2001, states that water currently used for dust control on the roadways and parking areas will be saved by paving these areas, and that the water saved will approximately equal the water consumed by a proposed power plant.¹

III.

The NPS alleges that for calendar year 2000, well #5, permitted under Permit 63586 and 63590, over pumped the permitted duty by 145.9 afa. The State Engineer finds that this allegation is correct.¹²

IV.

The NPS alleges that adequate monitoring and mitigation measures, including continuous water level recorders, daily pumping records and possibly additional monitoring wells, are required to predict potential impacts before they occur. The State Engineer finds these are presently pumped water rights, therefore there is no need to predict "potential impacts".¹⁻¹⁰

V.

The NPS alleges that the granting of these water right applications may impact publically held water resources; therefore, it is not in the public interest to grant the change applications.¹⁻¹⁰ The State Engineer finds these are waters already appropriated and are currently being used and no impacts have been shown to date.

¹² Basin pumpage records, official records in the office of the State Engineer.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹³

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:¹⁴

- a. the proposed use or change conflicts with existing rights;
- b. the proposed use or change conflicts with protectible interests in domestic wells as set forth in NRS § 533.024; or
- c. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the granting of the subject change applications will have no impact on the amount of water presently withdrawn from the basin.

IV.

The State Engineer concludes that the applicant, Republic Environmental Technologies, Inc., is not in compliance with the terms and conditions of Permits 63586 and 63590 which limit the amount of water to be pumped to 109.0 afa for calendar years 2000 and 2001. Accordingly, the applicant has been requested in writing to comply with the terms of the subject permits.¹⁵

V.

The State Engineer concludes that a monthly report filed quarterly for the subject change applications is sufficient to protect the public interest under the present circumstances.

¹³ NRS chapters 533 and 534.

¹⁴ NRS chapter 533.370(3).

¹⁵ File Nos. 63586 and 63590, Official Records in the Office of the State Engineer.

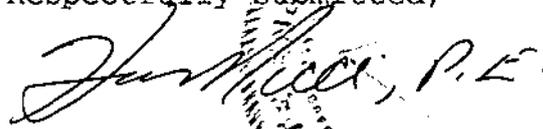
VI.

The State Engineer concludes the granting of Change Applications 67711 through 67720, inclusive, will not conflict with any existing rights nor threaten to prove detrimental to the public interest.

RULING

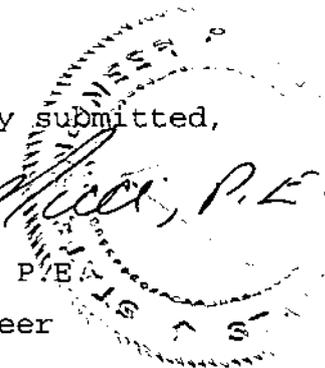
The protests to Applications 67711 through 67720, inclusive, are hereby overruled and Applications 67711 through 67720, inclusive, are granted subject to existing rights and the payment of statutory fees.

Respectfully submitted,



HUGH RICCI, P.E.

State Engineer



HR/RAD/dl

Dated this 20th day of

December, 2001.