

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

IN THE MATTER OF APPLICATIONS 49776,)
49777, 49778, 49779, 49780, 49781, AND 49782)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE BIG SMOKY VALLEY –)
NORTHERN PART HYDROGRAPHIC BASIN)
(137B), NYE COUNTY, NEVADA.)

RULING

#5636

GENERAL

I.

Application 49776 was filed on March 21, 1986, by Wine Glass, Inc., to appropriate 3.0 cubic feet per second (cfs) of underground water in the Big Smoky Valley – Northern Part Hydrographic Basin, Nye County, Nevada. The proposed manner of use is for geothermal industrial purposes within portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$ of Section 17, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18, E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 19, and the NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ of Section 20 all in T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T.11N., R.43E., M.D.B.&M.¹

II.

Application 49777 was filed on March 21, 1986, by Dale Darrough to appropriate 3.0 cfs of underground water in the Big Smoky Valley – Northern Part Hydrographic Basin, Nye County, Nevada. The proposed manner of use is for geothermal industrial purposes within portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$ of Section 17, the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18, E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 19, and the NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ of Section 20 all in T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T.11N., R.43E., M.D.B.&M.²

¹ File No. 49776, official records in the Office of the State Engineer.

² File No. 49777, official records in the Office of the State Engineer.

III.

Application 49778 was filed on March 21, 1986, by Dale Darrough to appropriate 3.0 cfs of underground water in the Big Smoky Valley – Northern Part Hydrographic Basin, Nye County, Nevada. The proposed manner of use is for geothermal industrial purposes within portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$ of Section 17, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18, the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 19, and the NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ of Section 20 all in T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8, T.11N., R.43E., M.D.B.&M.³

IV.

Application 49779 was filed on March 21, 1986, by Dale Darrough to appropriate 3.0 feet cfs of underground water in the Big Smoky Valley – Northern Part Hydrographic Basin, Nye County, Nevada. The proposed manner of use is for geothermal industrial purposes within portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the W $\frac{1}{2}$ of Section 17, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18, the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 19, and the NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ of Section 20 all in T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, T.11N., R.43E., M.D.B.&M.⁴

V.

Application 49780 was filed on March 21, 1986, by Dale Darrough to appropriate 3.0 cfs of underground water in the Big Smoky Valley – Northern Part Hydrographic Basin, Nye County, Nevada. The proposed manner of use is for geothermal industrial purposes within portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the W $\frac{1}{2}$ of Section 17, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18, the E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 19, and the NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ of Section 20 all in T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, T.11N., R.43E., M.D.B.&M.⁵

VI.

Application 49781 was filed on March 21, 1986, by Dale Darrough to appropriate 3.0 cfs of underground water in the Big Smoky Valley – Northern Part Hydrographic Basin, Nye County, Nevada. The proposed manner of use is for geothermal industrial purposes within portions of the

³ File No. 49778, official records in the Office of the State Engineer.

⁴ File No. 49779, official records in the Office of the State Engineer.

⁵ File No. 49780, official records in the Office of the State Engineer.

SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$ of Section 17, the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18, E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 19, and the NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ of Section 20 all in T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T.11N., R.43E., M.D.B.&M.⁶

VII.

Application 49782 was filed on March 21, 1986, by Dale Darrough to appropriate 3.0 cfs of underground water in the Big Smoky Valley – Northern Part Hydrographic Basin, Nye County, Nevada. The proposed manner of use is for geothermal industrial purposes within portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the W $\frac{1}{2}$ of Section 17, the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18, E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 19, and the NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ of Section 20 all in T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.11N., R.43E., M.D.B.&M.⁷

VIII.

Applications 49777 through 49781 were timely protested by Luther L. and Lillian Darrough on grounds that; the Applicant does not own the real property and has not sought permission from the owner of record. The Protestants also contended that the approval of the subject applications would conflict with existing rights and would be detrimental to public interest. Lastly they requested action be stayed pending the outcome of court action that will have bearing: Dale Darrough and Adelle Eicher v. Luther L. Darrough, et. al., Case No. 10377, Nye Co., Nevada.²

FINDINGS OF FACT

I.

On May 1, 2000, the Office of the State Engineer received a copy of an Amended Court Deed for Case No. 10377; Dale Darrough and Adelle Eicher v. Luther L. Darrough, et. al., Nye Co., Nevada.¹ This deed indicates that Luther L. Darrough, Lee Darrough, Dale Rae Sherman, Jay Rodriques, Barbara McCauley, Dorothy Woodard and the Estate of Doris Johnson own all water, water rights, water applications, water permits and, the geothermal and mineral rights appurtenant to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, the W $\frac{1}{2}$ of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18, and portions of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, portions of the N $\frac{1}{2}$

⁶ File No. 49781, official records in the Office of the State Engineer.

⁷ File No. 49782, official records in the Office of the State Engineer.

NW¼ of Section 20, all in T.11N., R.43E., M.D.B.&M.⁸ This area comprises the place of use described under the subject applications and their supporting map. The State Engineer finds that the Applicants do not control the respective places of use described by the applications in question and that without the consent of the court determined real property owners, neither Wine Glass, Inc. nor Dale Darrough can place the requested water to its intended beneficial use.

II.

By letter dated April 21, 2000, Wine Glass, Inc., was requested by the Office of the State Engineer to submit written evidence of a continued interest in Application 49776. Copies of this letter were sent to the Applicant's agent of record, to all listed officers of the corporation and Luther L. and Lillian Darrough. The Applicant was advised that a response to this request must be received in the Office of the State Engineer by June 30, 2000. The Applicant was also advised that a failure to respond within the allotted time period would result in the consideration of the applications with the evidence available in the records of the Office of the State Engineer. None of the letters were returned and no response has been received from Wine Glass, Inc., the agent, or any corporate officer. Lillian Darrough, successor in interest to Luther L. Darrough, replied to this mailing stating she still opposes any and all geothermal development within the proposed place of use. The State Engineer finds that the Applicant has been properly noticed at its correct address of record of the need to provide written evidence of a continued interest in the subject application but has failed to do so; therefore, Application 49776 can be considered for denial.

III.

By letter dated April 21, 2000, Dale Darrough was requested by the Office of the State Engineer to submit written evidence of a continued interest in Applications 49777, 49778, 49779, 49780, 49781, and 49782. Copies of this letter were sent to the Applicant's agent of record and to all listed officers of the corporation. The Applicant was advised that a response to this request must be received in the Office of the State Engineer by June 30, 2000. The Applicant was also advised that a failure to respond within the allotted time period would result in the consideration of the applications with the evidence available. The letter to Dale Darrough was returned undeliverable and no response has been received from the agent or any corporate officer. The State Engineer finds that the Applicant has been properly noticed at its correct address of record of the need to

⁸ Note, the deed states, "...the W½ of the NW¼ SE¼ of Section 17..." the applications indicate this should read, "the NW¼ of the SE¼ and th W½ of Section 17..."

provide written evidence of a continued interest in the subject applications but has failed to do so; therefore, Applications 49777, 49778, 49779, 49780, 49781, and 49782 can be considered for denial.

IV.

The Office of the State Engineer contacted the Nevada Division of Minerals on May 13, 2005, and the BLM Division of Minerals on June 22, 2005, for current geothermal permit and leaseholders. Neither Wine Glass, Inc. nor Dale Darrough was found to possess current permits or leases for the Darrough Hot Springs Area. The State Engineer finds that the Applicants do not currently hold the required permits or leases necessary to put the water to beneficial use; therefore, Applications 49776, 49777, 49778, 49779, 49780, 49781, and 49782 can be considered for denial.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁹

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁰

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

III.

A water right application is filed to request an appropriation of water to be diverted at a specific location and used within a well defined place of use for a specific purpose, which is represented under Applications 49776, 49777, 49778, 49779, 49780, 49781, and 49782 as approximately 620 acres of private land for the development of geothermal resources. The lawfully recognized land and geothermal right owners have indicated they do not desire to participate in the development of geothermal resources with the Applicants. The State Engineer finds that the Applicants cannot control the point of diversion or the place of use without the consent of the

⁹ NRS chapters 533 and 534.

¹⁰ NRS § 533.370(5).

rightful owners; therefore, without the owners consent the purpose for which said applications were filed does not exist and the necessity to divert water as proposed does not exist.

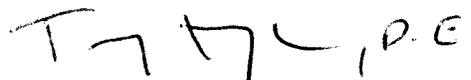
IV.

The Applicants have been requested to provide the State Engineer with additional information on multiple occasions. The last request was made with the understanding that a failure to respond in a timely manner would result in the consideration of Applications 49776, 49777, 49778, 49779, 49780, 49781, and 49782 with the evidence available. No written response from the Applicants has been received in the Office of the State Engineer. The State Engineer concludes that the Applicants have been properly noticed at their correct addresses of record and that the approval of applications, that the Applicants have not expressed an interest in pursuing, would threaten to prove detrimental to the public interest.

RULING

The protests to Applications 49777 through 49781 are upheld in part and Applications 49776, 49777, 49778, 49779, 49780, 49781, and 49782 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/WHR/jm

Dated this 8th day of
August, 2006.