IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 40464)
FILED TO APPROPRIATE WATER FROM)
SUTRO TUNNEL IN DAYTON VALLEY, LYON)
COUNTY, NEVADA.)

RULING

GENERAL

Application 40464 was filed on February 5, 1980, by Comstock Tunnel and Drainage Co. to appropriate 9.284 c.f.s. of water from Sutro Tunnel (underground) for quasi-municipal and domestic purposes within the N1/2 SW1/4, SE1/4 SW1/4 Section 31; S1/2 S1/2, NW1/4 SW1/4 Section 32, T.17N., R.22E., M.D.B.&M.; W1/2 NW1/4, portion of NW1/4 SW1/4 Section 5; Section 6; NW1/4 NW1/4 Section 7, T.16N., R.22E., M.D.B.&M.; NW1/4, S1/2 Section 1; N1/2, portion of W1/2 SW1/4 Section 12; portion of NW1/4 NW1/4 Section 13; SE1/4 SE1/4 Section 2, T.16N., R.21E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 1, T.16N., R.21E., M.D.B.&M.[1]

A field investigation was conducted on September 5, 1984, for the purpose of gathering additional information for the State Engineer.[2]

James Schryver, applicant, stated this application (40464) is to appropriate drainage from the Sutro Tunnel that has been claimed under proof of vested use - 03153 on file with this office. According to Mr. Schryver, the water that came out of the tunnel has since been held back from deterioration and cave-ins causing it to repercolate back into the ground in the floor of the passage. He wants to extract a lesser amount of water from wells as shown on the supporting map for Application 40464.

The small amount of water (150-200 gpm) that is presently coming out of the tunnel is untreatable for domestic use having been contaminated with organic matter and mineral deposits. Mr. Schryver indicated he would return this water to the ground water by means of leach lines or other injection modes.

FINDINGS OF FACT

I.

Proof of Appropriation 03153 is an undetermined claim filed on May 21, 1979, by Comstock Tunnel and Drainage Company for 16.1 c.f.s. of water to irrigate 1700 acres of ground in Sections 1 and 12, T.16N., R.21E., M.D.B.&M.; Sections 5, 6 and 7, T.16N., R.22E., M.D.B.&M.; and Sections 31 and 32, T.17N., R.22E., M.D.B.&M. Domestic use at an estimated 200,000 gpd and an unspecified amount for milling purposes was also claimed. An 1881 priority was included in the proof of appropriation.[3]

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[1] Public record in the office of the State Engineer under Application 40464.

[2] A copy of the field investigation conducted on September 5, 1984, is a public record on file with Application 40464 in the office of the State Engineer.

[3] Proof of Appropriation 03153 is a public record on file in the office of the State Engineer.

II.

Application 40464 was filed to appropriate 9.28 c.f.s. of water from 12 individual well sites within the place of use as shown on a supporting map. The point of diversion on the application is not the intended point of diversion but rather a point claimed under Proof of Appropriation 03153. The twelve well sites are proposed to appropriate underground water in Dayton Valley subbasin as an alternative to the developed water from Sutro Tunnel claimed as a vested right. Application 40464 was filed for quasi-municipal and domestic purposes while the claim of vested right is for irrigation, milling and domestic use.

III.

The State Engineer has previously denied applications to appropriate ground water from Dayton Valley subbasin for irrigation, quasi-municipal and municipal uses on the grounds that withdrawal of additional ground water in a basin in which appropriations of ground water substantially exceed the perennial yield of the basin would, therefore, adversely affect existing rights and would be detrimental to the public interest and welfare.[4]

IV.

In the opinion of the court in Cardelli vs. Comstock T Co., J. Fitzgerald stated that Sutro Tunnel received waters from three sources: draining of land adjacent to the tunnel, pumping from the mines into the tunnel and water discharged into the tunnel after being used in machinery.[5]

Testimony showed that nine-tenths of the waters flowing through the tunnel came from pumping waters from other mines and not from percolating waters.

It was also concluded by the court that there were three periods in the history of said water: first, when there was pumping of waters from the mines into the tunnel; a second long period (8-10 years) when there was no pumping and very little water flowed from the tunnel; and third, beginning in 1899 when there was again pumping of waters from the mines into the tunnel and considerable water ran again from the tunnel.

(NOTE) The Great Cornish pumps were pulled from the mines in the 1920's. Water still flowed out because of a 300 foot drop from the mines to the mouth of the tunnel.[6]

The court declared that such a stream is an artificial and temporary stream produced by the capital, labor and enterprise of those developing said waters.

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[4] See Rulings 1996, 2064, 2168, 2173, 2220, 2226, 2322, 2323, 2436, 2493, 2539, 2588, 2593 and 2630, public record in the office of the State Engineer.

[5] Cardelli v. Comstock T Co., 26 Nev. 293, 295 (1901).

[6] Part IV, Building of the Sutro Tunnel by Dr. Effie Mona Mack, Nevada State Journal, August 24, 1958.

V.

Developed waters are new waters which, prior to the work of the developer, were not part of the source of supply but are added to a stream or other source or area by artificial means.[7]

VI.

All underground waters within the boundaries of the state belong to the public and, subject to all existing rights to the use thereof, are subject to appropriation for beneficial use only under the laws of this state relative to the appropriation and use of water and not otherwise.[8]

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit where:

A. there is no unappropriated water in the proposed source, or

B. the proposed use conflicts with existing rights, or

C. the proposed use threatens to prove detrimental to the public welfare.[10]

III.

The evidence and information available indicates most of the water for Proof of Appropriation 03153 was an artificial and temporary stream developed and produced by the pumping of several mines in the Comstock Lode in the late 1800's through the 1920's. The developed water is no longer available and cannot be considered replacable by the underground alluvial aquifers of Dayton Valley.

IV.

The granting of a permit under Application 40464 would result in the withdrawal of additional ground water in a basin in which appropriations of ground water substantially exceed the perennial yield of the basin and would, therefore, adversely affect existing rights and be detrimental to the public interest and welfare.

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[7] Silver King Consol. Min. Co. v. Sutton, 85 Utah 297, 307, 39 P.2d 682 (1934); Cardelli v. Comstock Tunnel Co., 26 Nev. 284, 293-295, 66 P. 950 (1901).

[8] NRS 534.020.

[9] NRS 533.325.

[10] NRS 533.370, subsection 3.

RULING

Application 40464 is hereby denied on the grounds that the underground waters of Dayton Valley Basin are a different source than the developed waters of Sutro Tunnel and that granting a permit thereof would adversely affect existing rights and would be detrimental to the public interest and welfare.

Respectfully submitted

Peter G. Morros
State Engineer

PGM/GC/bl

Dated this 5th day of

February, 1985.