

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 52046,
52047, 52048, 52049, 52050 AND 52051 TO
APPROPRIATE WATER FROM THE KELLY)
CREEK AREA GROUNDWATER BASIN,))
HUMBOLDT COUNTY, NEVADA.)

RULING

GENERAL

Application 52046 was filed on April 27, 1988, by Santa Fe Pacific Mining, Inc. (Santa Fe) to appropriate 5.0 c.f.s. of water from an underground source for mining, milling and domestic purposes, at a point within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33, T.39N., R.43E., M.D.B.&M.

Application 52047 was filed on April 27, 1988, by Santa Fe to appropriate 5.0 c.f.s. of water from an underground source for mining, milling and domestic purposes, at a point within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, T.39N., R.43E., M.D.B.&M.

Application 52048 was filed on April 27, 1988, by Santa Fe to appropriate 5.0 c.f.s. of water from an underground source for mining, milling and domestic purposes, at a point within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, T.39N., R.43E., M.D.B.&M.

Application 52049 was filed on April 27, 1988, by Santa Fe to appropriate 5.0 c.f.s. of water from an underground source for mining, milling and domestic purposes, at a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33, T.39N., R.43E., M.D.B.&M.

Application 52050 was filed on April 27, 1988, by Santa Fe to appropriate 5.0 c.f.s. of water from an underground source for mining, milling and domestic purposes, at a point within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T.39N., R.43E., M.D.B.&M.

Application 52051 was filed on April 27, 1988, by Santa Fe to appropriate 5.0 c.f.s. of water from an underground source for mining, milling and domestic purposes, at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T.39N., R.43E., M.D.B.&M.

Water Resources Bulletin No. 32 "Hydrologic Reconnaissance of the Humboldt River Basin, Nevada" was prepared cooperatively by the United States Department of the Interior - Geological Survey and the Nevada Department of Conservation and Natural Resources in 1966.

FINDINGS OF FACT

I.

The Kelly Creek Area Groundwater Basin was designated by the State Engineer pursuant to NRS Chapter 534 as an area in need of additional administration.¹

II.

Protests to the granting of Applications 52046 through 52051, inclusive, were timely filed on June 9, 1988, as provided in NRS 533.365 by Jim Christison (Christison). Protestant requested the subject applications be denied for the following reasons and on the following grounds, to wit:

As the entire aquifer of the Clover Valley has been designated as a sensitive ground water basin with temporary closure restrictions, and other preferred use well permits have not been granted for many years, we fail to see how permitting any additional use for mining beyond that which has already been made exception for, can reflect a sound and impartial management of such a limited resource.

III.

Protests to the granting of Applications 52046 through 52051, inclusive, were timely filed on July 20, 1988, as provided in NRS 533.365 by Gold Fields Operating Co. - Chimney Creek (Gold Fields). Protestant requested the subject applications be granted conditionally and subject to a written agreement, by and between protestant Gold Fields and applicant Santa Fe, for the following reasons and on the following grounds, to wit:

Preliminary hydrologic studies prepared by R. Ellison of Environmental Solutions, Inc., indicate that a substantial drawdown will possibly occur in the vicinity of protestant's (Gold Fields Operating Co. - Chimney Creek) prior wells. It is the request of protestant that FRM, Inc., Santa Fe Pacific

¹ State Engineer Order No. 536, dated May 9, 1975.

Mining, Inc. and protestant enter into an agreement to resolve all ground water and mine dewatering problems.

IV.

On September 6, 1988, the State Engineer received a letter dated September 1, 1988, by counsel for Gold Fields, advising of the formal withdrawal of the protests filed by Gold Fields and further advising of the execution of an agreement by and between Gold Fields and Santa Fe on September 1, 1988.

V.

After properly noticing all parties with standing,² the State Engineer conducted a formal field investigation on September 22, 1988, to gather additional information on the subject protested applications.³

VI.

After proper notice, an administrative hearing was held in Winnemucca, Nevada, February 28, 1989, to receive evidence and testimony relevant to the subject applications and protests.⁴ Evidentiary presentations were made by both applicant and protestant and numerous exhibits were received in evidence.

VII.

Protestant Christison testified on the issue of how much underground water is available on a perennial yield basis in the Kelly Creek area. Christison further testified that previous actions of the State Engineer denying applications for underground water appropriations for agricultural purposes were inconsistent with later approvals by the State Engineer of underground appropriations for mining purposes. Christison indicated that the granting of the subject applications would adversely affect existing rights and would not be in the public interest.⁵

² See State's Exhibit 10, administrative hearing before the State Engineer, February 28, 1989; (hereinafter, all exhibits refer to this hearing file) in the office of the State Engineer.

³ See State's Exhibit 10, includes report of formal field investigation.

⁴ See State's Exhibit 1, Hearing Notice.

VIII.

Applicant Santa Fe presented un rebutted expert testimony and evidence that as much as 28,800 acre-feet of water may be available on a perennial yield basis in the Kelly Creek Groundwater Basin. Applicant's expert witness testified this figure was derived from his analysis of precipitation and perennial yield data for the larger area studied in Water Resources Bulletin No. 32, within which lies the Kelly Creek Area.⁶ On the weight of this evidence the State Engineer finds that 28,800 acre-feet is available on a perennial yield basis in the Kelly Creek Area Groundwater Basin.

IX.

The State Engineer is required under NRS Chapter 533 and 534.110(3) to determine if there is unappropriated water available. Evidence presented by Santa Fe and confirmed by the State Engineer indicates present certificated and permitted underground water appropriations in good standing total 13,900 acre-feet.⁷ Therefore the State Engineer finds there is unappropriated water available in the Kelly Creek Groundwater Basin.

X.

Santa Fe presented evidence and testimony that the information available to date does not indicate a trend in groundwater level declines but does indicate some annual and seasonal fluctuations in water levels due to existing groundwater development.⁸

⁵ Transcript, administrative hearing before the State Engineer, February 28, 1989, pp. 25-30. Testimony of James Christison. The State Engineer reviewed the previous rulings of applications for agricultural purposes. These applications were in fact denied on the grounds that a concentration of wells created if those applications were approved would tend to conflict with existing rights. The later appropriations for mining granted by the State Engineer were for wells outside the concentrated area and the Santa Fe Applications 52046 through 52051, inclusive, are for wells over six miles away from the agricultural well field.

⁶ Transcript, pp. 52 and 53; pp. 76 and 77. Testimony of Dr. John Sharp.

⁷ See Santa Fee Exhibit "B" and brief filed by applicant Santa Fe on March 29, 1989; all certificated and permitted underground appropriations are public record in the office of the State Engineer.

⁸ Transcript, pp. 57-58 and see Santa Fe Exhibit "J"; Transcript p. 67. Testimony of Dr. John Sharp.

Applicant's expert witnesses testified and presented evidence that full utilization of existing rights together with the pumpage proposed in the subject applications would not cause unreasonable water level declines in area wide wells.⁹ Santa Fe further committed to the setting up of a monitor well network to collect water level data to assess the actual response of the groundwater system to development.¹⁰ On the weight of this evidence, the State Engineer finds the granting of the subject applications will not prove detrimental to the public interest nor tend to conflict with existing rights such that the rights of holders of existing appropriations cannot be satisfied.

CONCLUSIONS

I.

The State Engineer has jurisdiction in this matter pursuant to NRS Chapters 533 and 534.

II.

As provided under NRS 533.370, the State Engineer shall approve an application submitted in proper form which contemplates the application of water to beneficial use unless (NRS 533.370(3)):

1. There is no unappropriated water in the proposed source of supply,
2. The proposed use conflicts with existing rights, or
3. The proposed use threatens to prove detrimental to the public interest.

III.

On review of the entire record of evidence in this matter, the State Engineer concludes that there is unappropriated water available in the Kelly Creek Area Groundwater Basin. The record of evidence and testimony further supports the

⁹ Transcript, pp. 65-66; 80-86; 94. Testimony of Dr. John Sharp and of Forrest L. Fox.

¹⁰ Transcript, p. 39; p. 59, testimony of Michael Surratt and Dr. John Sharp, and see applicant's brief, p. 7, filed March 29, 1989.

conclusion that the granting of the subject applications will not tend to impair existing rights nor prove detrimental to the public interest, such that the rights of holders of existing appropriations cannot be satisfied.

IV.

The granting of Applications 52046 through 52051, inclusive, subject to the conditions of a total combined withdrawal of water limited to 3,620 acre-feet and subject to the implementation of a monitoring program suitable to the State Engineer, will not tend to conflict with existing rights nor prove detrimental to the public interest. The State Engineer is authorized and directed by law to regulate groundwater withdrawals based on priority in the event available data indicate unreasonable interference effects are occurring as a result of the utilization of these later appropriations.

RULING

The protests to the granting of Applications 52046, 52047, 52048, 52049, 52050 and 52051 are herewith overruled and permits will be granted upon receipt of statutory fees and subject to the following conditions:

1. The total combined duty shall be limited to 3,620 acre-feet.
2. Submittal by applicant, Santa Fe, a proposed monitoring plan within 30 days of the date of this ruling, including but not limited to:
 - A. Proposed number and location of wells to be monitored.
 - B. Frequency of measurements.
 - C. Methods of measurement and the frequency of reporting data to the State Engineer.
 - D. Measurements of actual pumpage of applicant's wells.

The authority of the State Engineer set forth in NRS Chapter 534 to regulate groundwater withdrawals based on priority is not waived by this ruling.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Peter G. Morros", enclosed within a large, hand-drawn oval.

PETER G. MORROS
State Engineer

PGM/TKG/bk

Dated this 19th day of
May, 1989.