

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 52069)
AND 52070 FILED TO CHANGE THE POINT OF
DIVERSION OF THE PUBLIC WATERS OF AN
UNDERGROUND SOURCE IN BIG SMOKY)
VALLEY-TONOPAH FLAT GROUNDWATER)
BASIN (BASIN 137-A), WITHIN NYE COUNTY,
NEVADA.)

RULING

GENERAL

I.

Application 52069 was filed on May 3, 1988, by Echo Bay Minerals Company to change the point of diversion of 0.1 c.f.s., a portion of water heretofore appropriated under Permit 49683. The proposed use is for mining, milling and domestic purposes within the S $\frac{1}{2}$ and S $\frac{1}{2}$ N $\frac{1}{2}$ Section 19, T8N., R.44E., M.D.B.&M. The proposed point of diversion is described as being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20, T8N., R.44E., M.D.B.&M. The existing point of diversion is described as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T8N., R.44E., M.D.B.&M.¹

Application 52070 was filed on May 3, 1988, by Echo Bay Minerals Company to change the point of diversion of 0.4 c.f.s. a portion of water heretofore appropriated under Permit 49683. The proposed use is for mining, milling and domestic purposes within the S $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ Section 19, T8N., R.44E., M.D.B.&M. The proposed point of diversion is described as being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 19, T8N., R.44E., M.D.B.&M. The existing point of diversion is described as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T8N., R.44E., M.D.B.&M.¹

II.

A protest to Application 52069 and 52070 was filed on July 27, 1988, by Joseph Von Harten for the following reasons and on the following grounds, to wit:

"Point of diversion may affect my well and operation."

¹ Public record in the office of the State Engineer.

The protestant requests that the application be "subject to prior rights" and that an order be entered for such relief as the State Engineer deems just and proper.¹

FINDINGS OF FACT

I.

Both the protestant's and applicant's wells lie within the same general drainage, i.e., Manhattan Gulch.²

II.

Application 52069 would move a portion of the point of diversion of Permit 49683 more than 1,750 feet further from the protestant's well. The well would also be located within a different sub-drainage. The ground surface elevation is approximately 7,020 feet above m.s.l.²

III.

Application 52070 would move a portion of the point of diversion of Permit 49683 approximately 1,350 feet nearer to the protestant's well. The well would be located near or within the main channel of the Manhattan Gulch drainage. The ground surface elevation is approximately 6,820 feet above m.s.l.²

IV.

The protestant's well under Permit 49369 is located within a sub-drainage to Manhattan Gulch from the south. The ground surface elevation is approximately 6,740 feet above m.s.l.² This well was drilled to a depth of 243 feet and produces 0.137 c.f.s. (61.5 g.p.m.) with a total pumpage of 3.07 acre-feet (1.0008 million gallons) from May 1988 to February 1, 1989.

² U.S. Geological Survey, Topographic Map, 7.5 Minute Series titled Manhattan, Nevada; public record in the office of the State Engineer.

V.

The total duty of water under all permits held by Echo Bay Minerals Company within the Manhattan Gulch drainage is limited to 290,875 million gallons annually as provided within the permit terms of Permit Nos. 52071, 52526 and 52527.¹

VI.

There is no hydrologic evidence that would adequately substantiate the claimed adverse affects of the proposed wells under Applications 52069 and 52070 on the well drilled under Permit 49639.

VII.

By Order No. 725, dated May 14, 1979, the State Engineer designated and described Big Smoky Valley-Tonopah Flat Groundwater Basin under provisions of NRS Chapter 534 (Conservation and Distribution of Underground Waters).¹

VIII.

Applications for permits to appropriate underground water within Big Smoky Valley-Tonopah Flat Groundwater Basin for mining and milling purposes previously have been approved by the State Engineer under preferred use provisions of Nevada Revised Statutes.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters.⁴

³ NRS Chapters 533 and 534.

⁴ NRS 533.370(3).

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use or change conflicts with existing rights, or
- C. The proposed use or change threatens to prove detrimental to the public interest.

III.

Nevada Revised Statutes provide that all water appropriated for beneficial use is subject to existing rights.⁵

IV.

Nevada Revised Statutes provide that the State Engineer is authorized and directed to designate preferred uses of underground water within designated areas.⁶

V.

Nevada Revised Statutes provide that each right to appropriate groundwater must allow for a reasonable lowering of the static water level at the point of diversion and that the granting of a permit is not prevented on the grounds that the water level may be lowered at the point of diversion of a prior appropriator, so long as the existing appropriation can be satisfied.⁷

VI.

The record does not disclose any evidence that the proposed appropriation of water under Applications 52069 and 52070 will conflict with existing water rights or threaten to prove detrimental to the public interest. The State Engineer has authority to regulate groundwater withdrawals under any right to protect earlier priority rights.

⁵ NRS 533.030.

⁶ NRS 534.120.

⁷ NRS 534.110.

RULING

I.

The protest of Joseph Von Harten is hereby overruled on the grounds that the proposed wells under Applications 52069 and 52070 will not increase the total pumpage from the Manhattan Gulch drainage and no hydrologic evidence exists to confirm excess drawdown will occur in the protestant's well.

II.

Applications 52069 and 52070 will be approved upon receipt of the permit fees. All approvals will be subject to prior rights and to terms, limitations and conditions specified in the permits.

III.

The State Engineer does not waive the right to regulate groundwater withdrawals under the subject applications.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/SW/bk

Dated this 27th day of

July, 1989.