

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

IN THE MATTER OF PROTESTED APPLICATION 46997)
FILED TO APPROPRIATE THE UNDERGROUND WATERS AND)
PROTESTED APPLICATION 61931 FILED TO CHANGE THE)
WATERS OF THE DODGE FLAT GROUNDWATER BASIN (82),)
WASHOE COUNTY, NEVADA.)

RULING

4444

GENERAL

I.

Application 46997 was filed on June 8, 1983, by Robert I. Cowles to appropriate 2.0 cubic feet per second (cfs) and not to exceed 200,000 gallons per day for 365 days per year or 224.044 acre feet annually (AFA) of the underground waters of the Dodge Flat Groundwater Basin, Washoe County, Nevada, for mining, milling, and domestic uses within Lot 1, W $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 24, T.21N., R.23E., 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 said Section 24.¹

II.

Application 46997 was timely protested by the Southern Pacific Land Company on the grounds that Application 46997 seeks to appropriate water from a well drilled and owned by Southern Pacific Land Company and in which there already exists a valid water right (Permit 46910). The Protestant requested that Application 46997 be denied because there is no unappropriated water at the source, there would be a conflict with existing rights, and the approval of said application threatens to prove detrimental to the public interest.¹

III.

In accordance with an agreement between the Applicant and the Protestant, Application 61931 was filed on March 4, 1996, by Robert I. Cowles to change the point of diversion and place of use of the 2.0 cubic feet per second (cfs) requested under Application 46997. The proposed use is for mining, milling, and domestic purposes

¹File No. 46997, official records in the Office of the State Engineer.

within portions of T.21N., R.23E., M.D.B.&M., T.21N., R.24E., M.D.B.&M., and T.20N., R.23E., M.D.B.&M. The total annual duty of water requested under Application 61931 is 1,446 AFA and the proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T.21N., R.23E., M.D.B.&M.²

IV.

Application 61931 was timely protested by Nevada Land and Resource Company, successor in interest to Southern Pacific Land Company, on the grounds that a permit was not issued under Application 46997, that Application 61931 appears to appropriate additional water rather than change the quantity requested under Application 46997, and that there is no unappropriated water in the Dodge Flat Groundwater Basin to serve this new appropriation. The Protestant requests that Application 61931 be denied. The Protestant stated that it "...is not protesting the proposed change in the point of diversion, if and only if, the proposed point of diversion under Application 61931 is separated from the point of diversion under Permit 57310 by a distance of at least 750 feet."²

FINDINGS OF FACT

I.

Regarding Application 46997, an agreement was reached between the Applicant and the Protestant which allowed the filing of Application 61931, as long as the proposed point of diversion is located at least 750 feet from the well existing under Permit 46910. The Protestant agreed that it would not protest Application 61931 and also would withdraw its protest to Application 46997, if required. After examining the locations of the points of diversion under Permit 46910 and Application 61931, it is confirmed that there is at least 750 feet of separation between the two points of

²File No. 61931, official records in the Office of the State Engineer.

diversion.³ The State Engineer finds that the conditions of the Agreement are met and that the protest to Application 46997 is thereby rendered moot.

II.

In Application 61931, the Applicant requested to change a total of 1,446 AFA. The total amount requested under Application 46997, which forms the basis for change Application 61931, is 224.044 AFA. A change application can be approved for the amount of the base water right and no more. Therefore, the quantity of water eligible to be approved under Application 61931 is 224.044 AFA. The State Engineer finds that the quantity of water that may be approved under Application 61931 is limited to 224.044 AFA.

III.

In its protest to Application 61931, Nevada Land and Resource Company stated that it is not protesting the proposed change under Application 61931 if the distance from its well (Permit 57310) to the proposed well is greater than 750 feet. To address this issue, the agent for the Applicant determined that the distance is at least 2,050 feet.⁴ The State Engineer finds that the separation desired by the Protestant is exceeded and there is no conflict with the Protestant's existing water rights. The State Engineer further finds that there are no other water rights in the Dodge Flat Groundwater basin that would be impaired by the approval of Application 46997 and the subsequent change Application 61931.

IV.

The proposed use under Applications 46997 and 61931 is mining, milling, and domestic. Mining and milling uses are considered temporary in nature and are expected to have no long-term effect on

³See the maps filed in support of Application 61931 and Permit 46910, official records in the Office of the State Engineer.

⁴See Affidavit dated July 18, 1996, of Bruce R. Scott, P.E. in File No. 61931, official records in the Office of the State Engineer.

the groundwater resource. Therefore, the State Engineer finds that there is unappropriated water available for the use proposed under Applications 46997 and 61931.

V.

The Applicant has met all the concerns expressed in the protests to Applications 46997 and 61931. Therefore, the State Engineer finds that there is no evidence that the approval of these applications would threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action.⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters of Nevada where:⁶

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

III.

The Applicant has met the concerns of the protestants to the approval of Applications 46997 and 61931. Therefore, the State Engineer concludes that the protests should be overruled and there is no conflict with existing rights.

IV.

Mining has been a predominant economic force in Nevada since before statehood. It has had such an impact that the Nevada legislature declared mining and mining related activities to be

⁵NRS Chapters 533 and 534.

⁶NRS 533.370.

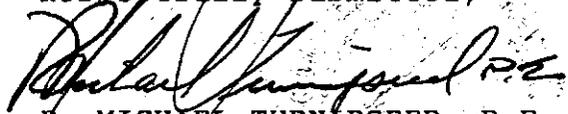
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recognized as a paramount interest of the State.¹ Given the temporary nature of mining, the proposed use of water under Applications 46997 and 61931 is not expected to have a long term effect on the groundwater resource. The State Engineer concludes that the approval of said applications will not threaten to prove detrimental to the public interest.

RULING

The protests to Applications 46997 and 61931 are hereby overruled and said Applications are hereby approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/ab

Dated this 2nd day of
October, 1996.

¹NRS 37.010(6)(a).