

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

IN THE MATTER OF APPLICATIONS)
58362 AND 58363 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
FROM MINE DEWATERING DISCHARGE)
WITHIN THE LOWER REESE RIVER)
VALLEY HYROGRAPHIC BASIN (59),)
LANDER COUNTY, NEVADA.)

RULING
#5368

GENERAL

I.

Application 58362 was filed on December 2, 1992, by Henry and Marian Filippini, to appropriate 0.0125 cubic feet per second (cfs) of water from mine dewatering discharge from the McCoy/Cove Mine operated by the Echo Bay Minerals Company for stockwatering purposes. The proposed place of use is described as being located within the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T.29N., R.43E., M.D.B.&M. The point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 19.¹

II.

Application 58363 was filed on December 2, 1992, by Henry and Marian Filippini, to appropriate 0.0125 cfs of water from mine dewatering discharge from the McCoy/Cove Mine operated by the Echo Bay Minerals Company for stockwatering purposes. The proposed place of use is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T.29N., R.43E., M.D.B.&M. The point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 30.²

III.

Applications 58362 and 58363 were timely protested, by Lander County on the grounds the basin is fully appropriated, approval of the application would impair existing rights, and approval of the application would be detrimental to the public interest.¹

¹ File No. 58362, official records in the Office of the State Engineer.

² File No. 58363, official records in the Office of the State Engineer.

IV.

Application 58363 was also timely protested, by the Bureau of Land Management (BLM) on the following grounds:¹

Establishing livestock water at this location is not consistent [sic] with BLM land use objectives for this area. BLM will not issue Range Improvement permits for ancillary facilities such as troughs and pipelines without specific stipulations on the season of use and degree of forage utilization by livestock. An uncontrolled water source will accelerate noxious weed growth. Original intent of water right was mine dewatering, not livestock. Should the application be granted, we recommend a stipulation that when the mine stops dewatering, for any reason, and ponds dry up, the water terminates.

FINDINGS OF FACT

I.

The applications seek new appropriations of water from a source described as a mine dewatering discharge pond. Records in the Office of the State Engineer show that the mine dewatering discharge is from the McCoy/Cove Mine, which was operated by the Echo Bay Minerals Company.

The Echo Bay Minerals Company has a number of water right permits on file in the Office of the State Engineer for mining, milling and dewatering purposes. By letter dated July 5, 2001, the Echo Bay Minerals Company requested the withdrawal of a large portion of their water rights. The letter explained that the mine had ceased open-pit mining operations in October 2000, and underground mining was anticipated to end around July 15, 2001. The remaining water rights continue in good standing to provide water for reclamation, environmental and mine closure proceedings. The letter indicates that the remaining water right permits will be withdrawn and all wells will be abandoned when reclamation ends.³

The State Engineer finds that dewatering has ceased at the mine; therefore, no water exists to satisfy the proposed applications.

³ See, Echo Bay Minerals Company letter of July 5, 2001, File No. 58414, official records in the Office of the State Engineer.

II.

When the State Engineer issues a water right permit, the permit comes with limitations and conditions. These limitations and conditions are commonly referred to as 'permit terms'. The newest active permit, on file for the Echo Bay Mineral Company, was issued on December 17, 1992. The permit terms state in part "All of the water from the dewatering wells not used for mining, milling and related purposes shall be returned to the groundwater source in the manner authorized under Division of Environmental Protection's Water Pollution Control Permit issued June 7, 1989. This permit is issued subject to the stipulation between Echo Bay Minerals Company and Lander County, dated May 11, 1993, and with the understanding that no additional consumptive use of water is granted under this permit."⁴

The State Engineer finds that the limitations and conditions found in the permit terms of the water rights for Echo Bay Minerals Company prohibits the use of the dewater for stockwatering purposes and this dewater must be returned to the groundwater source as specified in the terms of the permits.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁶

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

⁴ File No. 58414, official records in the Office of the State Engineer.

⁵ NRS chapters 533 and 534.

⁶ NRS § 533.370(4).

III.

The source of water under Applications 58362 and 58363 is mine dewatering discharge from the McCoy/Cove Mining operation. The mine is in closure and dewatering has ceased. The source of water is not available for appropriation and any water remaining in the infiltration ponds must be returned to the groundwater source as required by the terms of the permits. The State Engineer concludes that the issuance of any permits on this source, at this time, would not be in the public interest.

RULING

Applications 58362 and 58363 are hereby denied on the grounds their issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 8th day of
June, 2004.