

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

IN THE MATTER OF APPLICATION 76665)
FILED TO CHANGE THE POINT OF)
DIVERSION OF A PORTION OF THE PUBLIC)
WATER PREVIOUSLY APPROPRIATED UNDER)
PERMIT 73258 WITHIN THE IMLAY AREA)
HYDROGRAPHIC BASIN (072), PERSHING)
COUNTY, NEVADA.)

RULING

#5877

GENERAL

I.

Application 76665 was filed on January 24, 2004, by Sunrise Minerals, LLC to transfer 0.05525 cubic feet per second of underground water previously issued under Permit 73258 to a new point of diversion. The manner and place of use is not being requested for change and remains for mining, milling and domestic purposes within Section 17, T.33N., R.36E., M.B.D.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of said Section 17.

Information found in the remarks section of the application indicates that it is the Applicant's intention to develop a more productive well by transferring a portion of Permit 73258 to a new point of diversion. Currently, the well drilled under Permit 73258 is incapable of pumping its full permitted duty of water on a sustained basis.¹

II.

Application 76665 was timely protested by James Garst by and for Tahoe Milling, Inc. on the following grounds:¹

Sunrise has positioned their well as close as possible to the Dun Glen Creek. Tahoe Milling hold Permits & Certificates to the surface and underground water of

¹ File No. 76665, official records in the Office of the State Engineer.

Dun Glen Canyon Creek. Extensive pumping of water has and will diminish the water reserves of Dun Glen Canyon. The Division of water has already limited our right. The waters of the canyon do not satisfy our needs. There is no surplus available for claim jumpers.

FINDINGS OF FACT

I.

When considering a protested water right application, the State Engineer has the authority to decide whether the existing record must be supplemented with testimony and evidence derived from a public hearing.² The State Engineer finds that records of the Office of the State Engineer contain sufficient information to develop a full understanding of the issues before him and that a public hearing in this matter is not required.

II.

The Nevada Division of Water Resources (NDWR) records every water right filing that is received by its office, regardless, of whether it is approved or denied. A query of the water rights database maintained by the NDWR can quickly identify the number of active water right filings that exist within a particular township and range. Once identified, a separate abstract of each filing can be viewed in addition to scanned images of the water right filing and its supporting map. A search of active water rights held by the Applicant and the Protestant within T.33N., R.36E., produced a set of data that listed those active water right applications and permits held by Sunrise Minerals and Tahoe Milling. A listing of these water rights is presented in the following table:^{3,4}

² NRS § 533.365(3).

³ Nevada Division of Water Resources Water Right Database, Hydrographic Basin 072, official records in the Office of the State Engineer.

⁴ For clarification the term "Cer" refers to a certificated permit that has achieved a beneficial use of its water. Permitted water rights are abbreviated as "PER" with a "RFA" defined as an application that is ready for action and "RFP" denoting a protested water right application. The source codes are self explanatory except for "OSW" which refers to other surface water, such as water collected in pits or sumps

<u>File No.</u>	<u>Status</u>	<u>Source</u>	<u>Duty AFA</u>	<u>Owner</u>
17552	Cer	Str	0.5 cfs	Tahoe Milling
17652	Cer	UG	168.79	Tahoe Milling
57786	Cer	Spr	96.79	Garst (Tahoe Milling)
57937	Per	OSW	161.30	Tahoe Milling
71091	RFA	UG	200.00	Sunrise
73258	Per	UG	75.00	Sunrise
76665	RFP	UG	40.00	Sunrise

It is the Protestant's assertion that the transfer of 40.0 acre-feet of water as proposed under Application 76665 will adversely impact its existing surface and underground water rights. If the Protestant's active permits and certificates are plotted on the Dun Glen Quadrangle 7.5 minute topographic map, their points of diversion form a northeast trending line that approximates the trace of Dun Glen Canyon. Permit 17552 occupies the southern terminus of this line at a point that is approximately 2,800 feet upstream from the Applicant's proposed point of diversion, which lies to the southwest. The northeast terminus is represented by Permit 17652 which is approximately 1.5 upgradient miles from the proposed Sunrise Minerals well.

Permit 17652 was issued to Tahoe Milling for an appropriation of underground water, from a location that is adjacent to Dun Glen Creek. Digital photographs taken by the NDWR during 2006 and 2007 depict this well as being an open casing that projects approximately 20 feet from the ground surface.⁵ It is also located on the outer perimeter of a placer pit that has filled with water. In this type of setting, it must be assumed that the well is dominated by the nearby surface sources that influence its static water level. The State Engineer finds that the upstream location of these water rights and the fact that their source of water is generated from the upper Dun Glen Canyon watershed

⁵ Imlay Area Groundwater Pumpage Inventory Water Years 2006 and 2007, official records in the Office of the State Engineer.

creates a setting that will not be adversely impacted by the Applicant's proposed transfer.

IV.

The Protestant's remaining water right is found in the SW¼ SW¼ of Section 16, near the boundary that separates the Sunrise Minerals and Tahoe Milling operations. Permit 57786 was approved to "...reclaim water that is leaking from our pond located just above the spring."⁶ Aerial imagery confirms that this pond was formed by impounding the waters of Dun Glen Creek behind an earth dam that spans the canyon in the SW¼ of Section 16.⁷ This places a high reliance upon the upstream flows generated by Dun Glen Creek and its tributary springs and little dependence upon groundwater sources. The State Engineer finds that the change proposed by Application 76665 would not adversely affect Tahoe Milling's ability to reclaim any surface water that escapes its Dun Glen Creek impoundment.

V.

As to the Protestant's assertion that claim jumpers do not deserve surplus water, the State Engineer finds that the issue of mineral trespass does not fall within his responsibilities as set forth under the NRS.

VI.

Application 76665 requests a change in an existing ground-water permit that is currently considered to be in good standing. As a change application, its approval would not represent an additional appropriation of underground water from the Imlay Area ground-water basin. The State Engineer finds that the issue of unappropriated water does not apply to the subject application.

⁶ File No. 57786, official records in the Office of the State Engineer.

⁷ Google Earth Imagery, Dun Glen Canyon, Nevada.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:⁹

- 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.

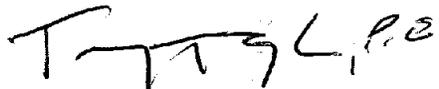
III.

The State Engineer concludes the granting of a change application on water already appropriated from this source will not conflict with any existing water rights or threaten to prove detrimental to the public interest.

RULING

The protest to Application 76665 is hereby overruled and said application is approved subject to existing rights and the payment of the statutory permit fee.

Respectfully submitted,



Tracy Taylor, P.E.
State Engineer

TT/MDB/jm

Dated this 7th day of

August, 2008.

⁸ NRS chapters 533 and 534.

⁹ NRS § 533.370(5).