

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

IN THE MATTER OF APPLICATIONS 80974, 80975)
AND 80976 FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF A PORTION)
OF THE PUBLIC WATERS PREVIOUSLY)
APPROPRIATED UNDER PERMITS 72666, 72685,)
AND APPLICATION 80977 FILED TO CHANGE)
THE POINT OF DIVERSION AND PLACE OF USE)
OF THE PUBLIC WATERS PREVIOUSLY)
APPROPRIATED UNDER PERMIT 81013, AND)
APPLICATION 81013 FILED TO CHANGE THE)
POINT OF DIVERSION, PLACE OF USE AND)
MANNER OF USE OF A PORTION OF THE PUBLIC)
WATERS PREVIOUSLY APPROPRIATED UNDER)
PERMIT 58405, ALL OF AN UNDERGROUND)
SOURCE WITHIN THE CRESCENT VALLEY)
HYDROGRAPHIC BASIN (54), LANDER COUNTY,)
NEVADA.)

RULING
#6175

GENERAL

I.

Application 80974 was filed on July 12, 2011, by Cortez Joint Venture to change the point of diversion and place of use of 4.1438 cubic feet per second (cfs), not to exceed 3,000 acre-feet annually (afa), a portion of water previously appropriated under Permit 72666 from an underground source for mining, milling, dewatering and domestic purposes. The proposed place of use is described as being located within a portion of the E½ of Section 1 and a portion of the E½ of Section 12, T.26N., R.47E., M.D.B.&M., within a portion of Sections 6 and 7, T.26N., R.48E., M.D.B.&M., the W½ SE¼, E½ SW¼ of Section 13, SW¼ SW¼ of Section 23, NE¼, E½ NW¼ of Section 24 and NW¼, W½ NE¼ of Section 26, T.27N., R.46E., M.D.B.&M., all of Sections 4, 5, and 6, E½ of Section 7, all of Sections 8 and 9, E½, SW¼ of Section 18, N½, SW¼ of Section 19, E½ of Section 24, all of Section 25, SE¼ of Section 30 and all of Section 36, T.27N., R.47E., M.D.B.&M., W½ of Section 19, all of Sections 30 and 31, T.27N., R.48E., M.D.B.&M., E½, SW¼ of Section 13, SE¼ SW¼ of Section 15, SE¼ NE¼, NE¼ SE¼ of Section 21, NW¼, NW¼ SW¼ of Section 22, E½ of Section 27, NW¼, W½ NE¼ of Section 28, S½ of Section 29, SE¼ of Section 30, Lots 7, 8, 9, 10, E½ of Section 31, all of Section 32, SE¼

of Section 34, and W $\frac{1}{2}$, SE $\frac{1}{4}$ of Section 35, T.28N., R.47E., M.D.B.&M., all of Sections 1, 3, 5, and 7, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 8, all of Sections 9, 11, and 13, N $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ of Section 14, all of Section 15, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ of Section 16, all of Section 17, N $\frac{1}{2}$ N $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18 and N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 23, T.28N., R.48E., M.D.B.&M., and all of Sections 3, 7, 9 and 17, T.28N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T.27N., R.47E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T.27N., R.47E., M.D.B.&M.¹

II.

Application 80975 was filed on July 12, 2011, by Cortez Joint Venture to change the point of diversion and place of use of 0.6906 cfs, not to exceed 500 afa, a portion of water previously appropriated under Permit 72666 from an underground source for mining, milling, dewatering and domestic purposes. The proposed place of use is the same as described under Application 80974.²

III.

Application 80976 was filed on July 12, 2011, by Cortez Joint Venture to change the point of diversion and place of use of 2.0719 cfs, not to exceed 1,500 afa, a portion of water previously appropriated under Permit 72685 from an underground source for mining, milling, dewatering and domestic purposes. The proposed place of use is the same as described under Application 80974.³

IV.

Application 80977 was filed on July 12, 2011, by Cortez Joint Venture to change the point of diversion and place of use of 2.0 cfs, not to exceed 1,447.94 afa, a portion of water previously appropriated under Permit 72686 from an underground source for mining, milling, dewatering and domestic purposes. The proposed place of use is the same as described under Application 80974.⁴

¹ File No. 80974, official records in the Office of the State Engineer.

² File No. 80975, official records in the Office of the State Engineer.

³ File No. 80976, official records in the Office of the State Engineer.

⁴ File No. 80977, official records in the Office of the State Engineer.

V.

Application 81013 was filed on July 28, 2011, by Cortez Joint Venture to change the point of diversion, manner and place of use of 0.01567 cfs, not to exceed 11.20 afa, a portion of water previously appropriated under Permit 58405 from an underground source for stockwater purposes. The proposed place of use is described as being located within that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15 lying west of Nevada Highway 306 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T.28N., R.47E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T.28N., R.47E., M.D.B.&M. The existing point of diversion is described as being located within Lot 5 of Section 6, T.29N., R.48E., M.D.B.&M. The existing manner of use is described as stockwater and domestic.⁵

VI.

Applications 80974 through 80977 and 81013 were protested by Martin Etcheverry, on behalf of Diamond Cattle Company, LLC and Etcheverry Family Limited Partnership on the following grounds:

Protestant is the holder of existing ground and surface water rights in Pine Valley and Kobeh Valley hydrographic basins/watersheds. Crescent Valley is adjacent to Pine Valley. Protestant owns and operates farming and ranching operation. Protestant's existing water rights are integral to its operation. Protestant objects to the [Applications] as [they] will likely prove detrimental and cause injury to Protestants [sic] existing water rights. Protestant requests that the applications be denied for the following reasons:

1. Crescent Valley is a designated basin. Ground water in the basin is fully or nearly fully appropriated. Granting change applications that are not adequately supported nor shown to protect the public interest will cause detriment to the basin, prior existing water rights holders and is in direct conflict with provision of Nevada water law.
2. These applications will cause injury to Protestant's existing surface and underground water rights. Specifically these applications will diminish the amount of water available for Protestants [sic] stock and other uses. Protestant has held its water rights for approximately 60 years. Protestant's water rights contribute to the continued and long-term economic viability of Protestant's ranching and farming operation. Unless Protestant's water rights are adequately mitigated and protected, the injuries to Protestant's water rights by approving the [Applications] will prove a serious detriment to our important water rights.

⁵ File No. 81013, official records in the Office of the State Engineer.

3. The works necessary to achieve beneficial use of the [Applications] are substantial and costly. The applicant has not presented nor stated the scope of its proposed works, nor has the Applicant demonstrated its ability to finance the works. We request the opportunity to (1) review a proposed scope of work to achieve beneficial use and (2) satisfy our concerns regarding the financial ability to complete this project and respond in money damage to any injuries to our water rights and ranching operations.
4. The State Water Rights Engineer should consider the consumptive use of the change application sought to be changed and consumptive use of the proposed beneficial use of water in determining whether the proposed change in the place of diversion and place of use complies with the public interest, the provisions of NRS 533.370(5) and all other applicable laws, rules and regulations.
5. The application[s] are vague and ambiguous and lacks sufficient information for full understanding of the proposed change. NRS 533.445. Specifically, the application[s] seek a partial change in point of diversion and place of use. The applicant further suggests the change is sought to adjust existing well permitted duties to recent past and expected performance levels. The suggested “recent past and expected” performance levels are unexplained, unsubstantiated and immaterial to the change requested. If applicants [sic] are seeking to diminish the base right, these change applications are not the appropriate procedure to that end.
6. The applications are contrary to the public interest. The State Engineer has a number of policy considerations to assess the public interest. *See Pyramid Lake Paiute Indian Tribe of Indians v. Washoe County*, 918 P.2d 697 (1996); NRS 533.370(5). The applications do not contain sufficient information to determine if the public interest is protected by [these applications.]

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.365(4) provides that it is within the State Engineer’s discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to change the public waters of Nevada. The State Engineer finds that in the case of protested Applications 80974 through 80977 and 81013 there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

II.

For management and water planning purposes, the State of Nevada is divided into 256 groundwater basins and sub-areas, each of which is identified by a name and number. Contained within these basins, is a subset of groundwater basins that are classified as designated

groundwater basins.⁶ A review of the applications and their supporting maps show that the proposed and existing points of diversion and places of use are located within the Crescent Valley Hydrographic Basin. The Crescent Valley Hydrographic Basin was designated by State Engineer's Order No. 755 on March 20, 1981. The purpose of the designation order was to provide a mechanism that allowed additional administration of the water resources within this basin. This was accomplished through subsequent State Engineer Order Nos. 1082, 1082-A, 1189, and 1082-B. These subsequent orders were issued because the State Engineer found that conditions warranted the adoption of well spacing requirements and the modification of rules and regulations to accommodate the necessities and unique characteristics of mining within Crescent Valley.⁷

The Protestant alleges that the applications will cause injury to the Protestant's existing surface and underground water rights by diminishing water for stock and other uses; however, the protest does not mention any specific water right, only that their existing water rights are located within the Pine Valley and Kobeh Valley Hydrographic Basins. The State Engineer finds that the records of the Office of the State Engineer do not show the Protestant as owner of any water rights within the Crescent Valley Hydrographic Basin, but there are water rights in the name of the Etcheverry Family Limited Partnership located within the Pine Valley and Kobeh Valley Hydrographic Basins. No water rights in the name of Diamond Valley Cattle Company, LLC were discovered in any basin.

The Office of the State Engineer spends a significant amount of time regulating the Applicant's mining project. For example, the Applicant is required to keep monthly records of detailed water usage and submit quarterly reports for review. The existing permits associated with the mine are also issued subject to the *Pipeline Gold Project Groundwater and Surface Water Monitoring Plan*. Additionally, the Applicant provides periodic updates through oral presentations at the State Engineer's office. At the last presentation on February 7, 2012, the mine representatives discussed the *4th Quarter 2011 Integrated Monitoring Plan Report* (4th

⁶ Designated Groundwater Basins of Nevada Map, 1:750,000, 2012, official records in the Office of the State Engineer.

⁷ State Engineer's Order Nos. 755, 1082, 1082-A, 1189, and 1082-B, dated March 20, 1981, October 6, 1993, August 23, 2007, June 4, 2008, and January 5, 2010, respectively, official records in the Office of the State Engineer.

Quarter IMP)⁸ and gave an overview of the mining operations related to its use of water resources. A review of the specific permit terms associated with the mining project show that the mine is limited to a total consumptive water use of 10,558.61 acre-feet annually, being 3,963.34 acre-feet annually for mining and milling purposes and 6,595.27 acre-feet annually for stock and irrigation purposes. The Applicant is allowed to dewater the active mining area to allow for the extraction of ore that exists below the pre-development groundwater table. Any water produced from dewatering in excess of the consumptive use limit is returned to the Crescent Valley Groundwater Basin via infiltration galleries or injection wells, which are also regulated by the Office of the State Engineer. Figure 5 of the 4th Quarter IMP shows that the dewatering in the pit area is localized and does not propagate toward Pine Valley or Kobeh Valley. The figure further shows that the nearby infiltration basins cause a mounding effect whereby the water table is higher than pre-development conditions on the Crescent Valley floor. The State Engineer finds that the protest allegation of conflicts with existing water rights in Pine Valley and Kobeh Valley is not supported by the data and information on file in the Office of the State Engineer. The State Engineer further finds that the Protestant has no water rights within the Crescent Valley Hydrographic Basin and that the approval of the change applications will have no measurable effect on the Protestant's existing water rights in Pine Valley and Kobeh Valley.

III.

The Protestant notes that Crescent Valley is a designated basin and asserts that the groundwater in the basin is fully or nearly fully appropriated. The Protestant also claims that “[g]ranteeing change applications that are not adequately supported nor shown to protect the public interest will cause detriment to the basin, prior existing water right holders and is in direct conflict with provision of Nevada water law.”

It is not disputed that the Crescent Valley Hydrographic Basin is designated and is near full appropriation, if temporary consumptive mining and milling rights are included; however, the applications at issue in this ruling are change applications of existing water rights and are not a request for new appropriations of water. In addition, the Protestant states that granting the change applications is in direct conflict with provision of Nevada water law on the basis that the

⁸ 4th Quarter 2011 Barrick Cortez, Inc. *Integrated Monitoring Plan Report*, 2011, official records in the Office of the State Engineer.

change applications are not adequately supported nor shown to protect the public interest. A protest against the granting of an application must set forth, with reasonable certainty, the grounds of the protest.⁹ As discussed below, the change applications are adequately supported and there is no requirement in Nevada law that the applications be shown to protect the public interest. The statutory requirement is that the applications do not threaten to prove detrimental to the public interest.

The estimated perennial yield of the Crescent Valley Hydrographic Basin is approximately 16,000 acre-feet annually. A review of existing water rights within the Crescent Valley Hydrographic Basin show total committed groundwater resource of about 15,500 acre-feet annually, adjusted for consumptive use and including temporary mining and milling. The applications do not seek an additional appropriation of water, but rather only request a change in the point of diversion, place of use, and/or manner of use of existing water right permits within the Crescent Valley Hydrographic Basin. In addition, the water sought for change represents water that has been previously appropriated and is water already accounted for in the groundwater basin budget for the Crescent Valley Hydrographic Basin. A review of records on file in the Office of the State Engineer show that the existing water rights being changed by the Applications are considered water already appropriated and are in good standing.

The State Engineer finds that the above protest issues are not set forth with reasonable certainty and may be dismissed. The State Engineer finds that the water sought for change under the applications has already been accounted for in the groundwater basin budget and will have no additional effect on the amount of groundwater appropriated within the basin. The State Engineer finds that the change applications are adequately supported by existing water rights that form the basis of the water sought for change and these existing water rights are in good standing and, therefore, do not threaten to prove detrimental to the public interest.

IV.

The protest requests that the State Engineer consider the consumptive use of the water sought to be changed and consumptive use of the proposed use of water in determining whether the proposed change in the place of diversion and place of use complies with the public interest. The statutory language under NRS 533.370(2) states, in part, that where the proposed change threatens to prove detrimental to the public interest, the State Engineer shall reject the

⁹ NRS § 533.365(1).

application and refuse to issue the permit. The Protestant is attempting to relate the consumptive use of water sought for change to the statutory language regarding threatens to prove detrimental to the public interest; however, this protest ground is not set forth with reasonable certainty and, as discussed below, the Protestant's protest ground was ill-considered and not consistent with the facts.

For change Applications 80974, 80975, 80976 and 80977, the existing water rights that form the basis for these changes, Permits 72666, 72685 and 72686, have been used for dewatering purposes and are part of a total combined duty of permits comprising the Applicant's total dewatering needs. The permit terms of these existing water rights expressly state that the permits will allow the permittee to dewater the mine area. Permits 72666, 72685 and 72686 are non-consumptive permits and water produced from these permits is returned to the Crescent Valley Hydrographic Basin via infiltration galleries or injection wells.¹⁰

The State Engineer finds the consumptive use consideration is found within the terms of the existing permits and, if these applications are approved, will also be part of their respective permit terms. The State Engineer finds that any consumptive use issues with the proposed change applications have already been considered with the issuance of the existing base rights; therefore, the change applications do not warrant any additional consumptive use considerations.

Application 81013 was filed to change the point of diversion, place of use and manner of use of existing Permit 58405. The change in manner of use is from stockwater and domestic purposes to just stockwater purposes. Stock watering results in a complete consumptive use of the water resource. The State Engineer finds that the change Application 81013 does not warrant any consumptive use consideration.

V.

The Protestant feels that the applications are vague and ambiguous and lack sufficient information, particularly noting remarks made on the application forms. The State Engineer has reviewed the change applications. Applications 80974 through 80977 seek to change existing water rights at an ongoing mining project. As stated on the application forms, these wells are part of an interconnected group of wells that dewater the mine. The applications seek to adjust

¹⁰ Permit Nos. 72666, 72685 and 72686, official records on file in the Office of the State Engineer.

existing well permitted duties to recent past and expected performance duties.¹¹ The Protestant's confusion regarding this statement is apparently a result of a lack of understanding of State Engineer's Order No. 1082-B, which is used to regulate dewatering at the mine. These adjustments are a necessary part of the water management (dewatering) at the mine. Mines are not static operations. The miner must follow the ore body typically by blasting away the overburden and moving large amounts of material. For example, the mine pit has expanded over time and many prior existing wells have now been mined out of existence and new wells have been drilled, for instance, for slope stability and pit dewatering. As the pit is developed, if the ore body is deeper, dewatering is often required to access the desired material for processing of the ore. The State Engineer finds that the information on the applications sufficiently described the proposed changes sought. The State Engineer finds that the applications comply with the State Engineer's methodology for management of water rights associated with the mine.

Application 81013 was filed to change the point of diversion, place of use and manner of use of existing Permit 58405. As explained on the Application form, the proposed change will move approximately 1/3 of the water appropriated under Permit 58405 to an existing well located about nine miles to the south south-west. The new point of diversion will allow cattle to utilize water on the west side of State Highway 306. With the recent construction of a fence along both sides of the highway, cattle on the west side have been fenced out of their existing water sources previously relied upon.¹² The State Engineer finds that Application 81013 is not vague, ambiguous or lacking sufficient information; rather, the intent of the application is clear.

The protest also states that if the Applicant is seeking to diminish the base right, these change applications are not the appropriate procedure to that end. A protest against the granting of an application must set forth, with reasonable certainty, the grounds of the protest.¹³ This protest demonstrates the Protestant's lack of understanding of the applications and of Nevada water law and does not set forth with reasonable certainty the ground of the protest.

¹¹ Application Nos. 80974, 80975, 80976 and 80977, Item 15, July 12, 2011, official records in the Office of the State Engineer.

¹² Application No. 81013, July 28, 2011, official records in the Office of the State Engineer.

¹³ NRS § 533.365(1).

The State Engineer finds that the applications were correctly filed according to Nevada water law and with sufficient information to clearly show the Applicant's intent. The State Engineer finds that the Protestant's claimed lack of understanding of the applications and demonstrated lack of understanding of Nevada water law are not appropriate grounds for denial of the applications.

VI.

Pumping records submitted to the State Engineer's office by the Applicant shows that the proposed points of diversion under Applications 80974 through 80977 are existing wells that are in current operation. The proposed point of diversion of Application 81013 is also an existing well. The Applicant has reported a 2011 production of 1.42 million ounces of gold at total cash costs of \$245 per ounce. Production in 2012 is anticipated to be 1.20-1.25 million ounces at total cash costs of \$300-\$350 per ounce.¹⁴ The State Engineer finds that the protest issue concerning the Applicant's financial ability to complete the project is without merit. This is an ongoing mining project already in existence.

VII.

The applications are not requesting new appropriations of water. Rather, the applications are seeking to change existing water rights. The water in question could be pumped at its full duty at its existing points of diversion or, if the change applications are approved, pumped at its full duty at the proposed points of diversion. The State Engineer finds the proposed changes will have no additional impact on the Crescent Valley Hydrographic Basin.

VIII.

The protest asserts that the applications are contrary to the public interest and states that the State Engineer has a number of policy considerations to assess the public interest citing to NRS § 533.370(5) and the case of *Pyramid Lake Paiute Tribe v. Washoe County*, 918 P.2d 697 (1996), what is commonly known as the Honey Lake decision. The Protestants assert that the applications do not contain sufficient information to determine if the public interest is protected. The State Engineer finds the applications contain the necessary information required and it is the Protestant who must with reasonable certainty state why they believe the public interest may not be adequately protected. The Applicant is not required on an application form to attempt to

¹⁴ *Barrick Reports Q4 2011 Financial and Operating Results*, Press Release Barrick, February 16, 2012, official record on file in the Office of the State Engineer.

address every protest issue that may be raised after said application is filed. The State Engineer finds the Protestant did not provide, with any reasonable certainty, specific reasons as to why they believe the use of the water threatens to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁵

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:¹⁶

- 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.

Applications 80974 through 80977 and 81013 seek to move the points of diversion a short distance to existing wells that will better serve the mining project. The existing water rights are permitted underground water rights in good standing that have already been accounted for in the basin's groundwater budget. The State Engineer concludes that the protest issues raised are without merit and may be overruled.

IV.

Based on the findings, the State Engineer concludes that change Applications 80974 through 80977 and 81013 will not conflict with existing rights and the use of the water will not threaten to prove detrimental to the public interest.

¹⁵ NRS Chapters 533 and 534.

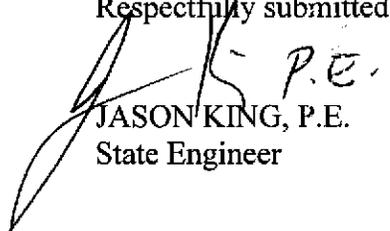
¹⁶ NRS § 533.370(2).

RULING

The protests are overruled and Applications 80974 through 80977 and 81013 are hereby approved subject to:

1. Existing water rights; and
2. Payment of the statutory permit fees.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 2nd day of
May, 2012.