

IN THE MATTER OF APPLICATIONS 44453)
AND 44454 FILED BY THE BOARD OF NYE)
COUNTY COMMISSIONERS TO APPROPRIATE)
AN UNDERGROUND SOURCE IN THE BIG)
SMOKY VALLEY, TONOPAH FLAT SUB-AREA,)
LOCATED IN NYE COUNTY, NEVADA.)

R U L I N G

FINDINGS OF FACT

I

Water Resources Bulletin 41, 1/ "Water Resources of Big Smoky Valley, Lander, Nye and Esmeralda Counties, Nevada," was prepared by F. E. Rush and C. B. Schroer in 1970 cooperatively by the U. S. Department of the Interior, Geological Survey, and the Nevada Department of Conservation, Division of Water Resources.

II

Application 44453 2/ was filed on September 21, 1981 by the Board of Nye County Commissioners to appropriate 3.0 c.f.s. of water for municipal purposes within the Town of Tonopah. The point of diversion is described as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 13, T. 3 N., R. 42 E., M.D.B.&M. The period of use is described as January 1st to December 31st of each year.

Application 44454 3/ was filed on September 21, 1981 by the Board of Nye County Commissioners to appropriate 3.0 c.f.s. of water for municipal purposes within the Town of Tonopah. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 13, T. 3 N., R. 42 E., M.D.B.&M. The period of use is described as January 1st to December 31st of each year.

III

Applications 44453 and 44454 were protested 4/ by Joseph Ferrari on April 5, 1982, on the following grounds:

"The proposed appropriation comes within approximately 300 feet of my windmill. When the test hole was pumped, the water table in my windmill was lowered considerably. The shaft for my windmill is only approximately 200 feet deep, and a deep well would deprive me of the use of this water which I need for my personal purposes at the Lambertucci Roma Trailer Park. Therefore, the protestant requests that the application be denied and that an Order be entered for such relief as the State Engineer deems just and proper."

IV

A field investigation in the matter of Applications 44453 and 44454 was conducted on May 20, 1983 by the Office of the State Engineer. A report 5/ of this field investigation is available at the Office of the State Engineer.

V

The results of the field investigation and review of the records 6/ of the State Engineer's Office indicated that the windmill, used as the basis of the protests and located in close proximity to the proposed points of diversion under Applications 44453 and 44454, has no appurtenant water rights. The nearest certificated water right 7/ of which the representatives of Joseph Ferrari stated that they had an interest is located a distance greater than one quarter of a mile away.

VI

The water rights 8/ of which the protestant states he has interest in are issued for irrigation purposes and commingled for use on 15.03 acres of land. The Lambertucci Roma Trailer Park has no appurtenant water rights 9/ to service the mobile homes in existence at the trailer park. The water being delivered to the trailer park is being diverted from a series of wells located in Sections 13, 14 and 15, T. 3 N., R. 42 E.; M.D.B.&M.

VII

Of the twelve wells found in Sections 13, 14 and 15, T. 3 N., R. 42 E., M.D.B.&M., four of the wells have existing rights 10/ in the names of the Lambertucci's, one is held in the name of the Tonopah Laundry Company, 11/ two are test wells drilled under waiver 12/ for the pending Applications 44453 and 44454, and the balance are represented as illegal points of diversion under use by Mr. Ferrari and/or points of diversion where water is presently not being diverted and the well casings are visible.

VIII

A portion of the Big Smoky Valley Ground Water Basin, known as the Tonopah Flat Area, was designated by the State Engineer on May 14, 1979, under the provisions of NRS 534.030. 13/

CONCLUSIONS

I

The State Engineer has jurisdiction over the parties and subject matter of this action. 14/

II

The State Engineer shall approve all applications made in proper form which: 15/

1. contemplate the application of water to a beneficial use, or where
2. the proposed use or change does not impair the existing rights, or
3. to be otherwise detrimental to the public welfare.

III

The results of the field investigation 16/ conducted on May 20, 1983 by the office of the State Engineer determined that the grounds of the protest filed by Joseph Ferrari on April 5, 1982 are invalid because the source of water alledged to be affected, as described under the protest, has no valid existing water right of record in the Office of the State Engineer.

RULING

The protests to the granting of Applications 44453 and 44454 are herewith overruled on the grounds that the protests are not valid as set forth in the Conclusions of this Ruling and the granting would not impair existing rights or be detrimental to the public interest and welfare. Municipal use is also declared to be a preferred use of the ground water resource within the designated portion of the Big Smoky Ground Water Basin under the authority set forth under NRS 534.120. Permits will be issued upon receipt of the statutory permit fees.

Respectfully Submitted,



PETER G. MORROS
State Engineer

PGM/GT/br

Dated this 24th day of

June, 1983.

FOOTNOTES

1. Public Record -- Office of the State Engineer.
2. Public Record - Office of the State Engineer.
3. Public Record - Office of the State Engineer.
4. Public Record under Applications 44453 and 44454 - Office of the State Engineer.
5. Public Record - Office of the State Engineer.
6. Public Record - Office of the State Engineer.
7. Permit 10501, Certificate 4795.
8. Permit 10493, Certificate 4794.
Permit 10501, Certificate 4795.
Permit 10502, Certificate 4796.
Permit 11321, Certificate 4797.
9. Public Record - Office of the State Engineer.
10. Permit 10493, Certificate 4794.
Permit 10501, Certificate 4795.
Permit 10502, Certificate 4796.
Permit 11321, Certificate 4797.
11. Permit 7267, Certificate 1152.
12. Public Record - Office of the State Engineer.
13. State Engineer's Order No. 725.
14. NRS 533.375.
15. NRS 533.370.
16. Public Record - Office of the State Engineer.