

IN THE MATTER OF APPLICATION NUMBER)
45225 FILED TO CHANGE A PORTION OF)
THE POINT OF DIVERSION, MANNER AND)
PLACE OF USE OF WATER HERETOFORE)
APPROPRIATED FROM AN UNDERGROUND)
SOURCE IN FISH LAKE VALLEY, ESMERALDA)
COUNTY, NEVADA)

RULING

INTRODUCTION

Application 45225 was filed to change the point of diversion, manner and place of use of a portion of water, heretofore appropriated under Permit No. 31137 from an underground source.

In 1973 Water Resources-Reconnaissance Series Report #58, "Water Resources Appraisal of Fish Lake Valley, Nevada and California," by F. Eugene Rush and T. L. Katzer, was prepared cooperatively by the Geological Survey, U.S. Department of the Interior. This report is available from the State Engineer's office.

FINDINGS OF FACT

I

Application 45225 was filed on January 15, 1982 by Lawrence T. Atkinson to change the point of diversion, manner and place of use of a portion of water heretofore appropriated under Permit 31137 from an underground source within the Fish Lake Valley Designated Ground Water Basin. Application 45225 proposes to change the point of diversion of 0.78 c.f.s. (564.4 acre-feet per year) from Section 9, T.1S., R.35E., M.D.B.&M. to Section 3, T.4S., R.36E., M.D.B.&M.; and to change the place of use from the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 9, T.1S., R.35E., M.D.B.&M., to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4, T.4S., R.36E., M.D.B.&M., and W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 10, T.4S., R.36E., M.D.B.&M. The manner of use is proposed to be changed from mining and milling to irrigation. Application 45225 was ready for action on August 14, 1982. 1/

II

Application 45225 was filed to appropriate water from an underground source within the Fish Lake Valley Ground Water Basin, Esmeralda County, Nevada designated and described by Order of the State Engineer issued February 10, 1978 pursuant to the provisions of NRS 534. 2/

III

Ground water recharge in the Fish Lake Valley area is derived primarily from precipitation and runoff from adjoining mountains. 3/ The perennial yield (the maximum amount of natural discharge that can be salvaged each year over the long term by pumping without bringing about some undersired result) is estimated to be 30,000 acre-feet. 4/

IV

The estimated consumption of ground water in Fish Lake Valley for 1970 was 14,000 acre-feet. Of this, approximately 2,400 acre-feet was consumed in California. 5/ Since 1970, the Nevada State Engineer has issued permits to appropriate an additional 20,000 acre-feet per year. Total existing rights to appropriate underground water in the Nevada portion of Fish Lake Valley amount to 47,037 acre-feet per year. Estimated consumption of groundwater in 1979 in Fish Lake Valley was 30,000 acre-feet a substantial increase over estimated consumption in 1970. 6/

V

Numerous applications to appropriate the underground water for irrigation purposes in Fish Lake Valley have been denied. These denied applications were filed prior to Application 45225. 7/

VI

There is a potential for additional ground water development in the California portion of Fish Lake Valley.

VII

Groundwater water levels have declined in Fish Lake Valley since the advent of pumpage by irrigation wells. 8/ In particular, levels have declined near the Nevada-California border.

VIII

The proposed point of diversion under Application No. 45225 is adjacent to the Nevada-California border area of declining water levels. The existing point of diversion is approximately 16 miles from the Nevada-California border area of declining water levels referred to in paragraph VII hereinabove.

IX

The State Engineer is authorized and directed to designate preferred uses of water within the respective area so designated by him such as the Fish Lake Valley Ground Water Basin. 9/ Conditions in Fish Lake Valley warrant a designation that the consumptive use of ground water to irrigate additional land is not considered to be a preferred use of the limited ground water resources of the Fish Lake Valley Ground Water Basin.

X

The applicant herein, has informed the State Engineer that he has no need for the water appropriated under Permit 31137 for 3 years, and thus has leased such right to the owner of the land described in Application No. 45225 for such period. Proof of Beneficial Use under 31137 is not due until February 17, 1983 with the possibility of 1 year extensions thereafter for good cause. There is no need to proceed with 45225 to protect the permitted right under 31137.

XI

Permit 31137 was issued on July 17, 1978 upon consideration that the right would be used for mining and milling not irrigation.

Mining and milling by nature of its activity is considered a temporary use of water and this is exemplified by virtue of the filing of application to change 45225 and further has been considered a preferred use of water in most designated ground water basins in Nevada. Many applications to appropriate water for irrigation have been heretofore denied in Fish Lake Valley. 7/

XII

To grant applications to change the manner of use of rights issued for preferred uses to non-preferred uses within designated ground water basins would not be in the public interest or in the best interest of the orderly management of the resource. Additionally, there would be an adverse effect on existing rights.

CONCLUSIONS

I

1. The State Engineer has jurisdiction of the parties and the subject matter of this action. 10/

II

2. Use of water for irrigation purposes is a non-preferred use in the designated Fish Lake Valley Ground Water Basin.

III

3. The State Engineer is prohibited by law from granting a permit where:

- A. There is no unappropriated water in the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public welfare. 11/

4. Granting an application to change the manner of use of water rights issued for preferred uses to non-preferred uses within a designated ground water basin is not in the best interest of the orderly management of the resource and would not be in the public interest. Accordingly the proposed change would conflict with existing rights and threaten to prove detrimental to the public welfare. 12/

RULING

Application 45225 is herewith denied on the following grounds:

1. Adverse effect on existing rights;
2. Irrigation is not a preferred use within the Fish Lake Valley Ground Water Basin;
3. The proposed use would conflict with existing rights and further would not be in the best interests of the orderly management of the resource within the ground water basin and, therefore, would be detrimental to the public welfare.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/bt

Dated this 2nd day

of SEPTEMBER 1982.

RECEIVED
24 SEP 1982

FOOTNOTES

1. Public Records in the Office of the State Engineer.
2. NRS 534.030
3. Water Resources - Reconnaissance Series Report #58, pp. 10.
4. Water Resources - Reconnaissance Series Report #58, pp. 45.
5. Water Resources - Reconnaissance Series Report #58, Table 12.
6. Public Records in the Office of the State Engineer.
7. Applications 31406, 31407, 31408, 31409, 31410, 31411, 31412, 31417, 31418, 31493, 31494, 31495, 31496, 31606, 31607, 31608, 31609, 31610, 31611, 31612, 31708, 31709, 31845, 31876, 31877, 31878, 31879, 31880, 31881, 31882, 31883, 31884, 31918, 31919, 31920, 31941, 31943, 31944, 31949, 31950, 31960, 31919, 31970, 31971, 31972, 31973, 31974, 31993, 31994, 31995, 31996, 32010, 32011, 32012, 32016, 32017, 32018, 32020, 32021, 32046, 32047, 32086, 32115, 32125, 32126, 32155, 32162, 32206, 33210, 32211, 32505, 32013, 32124, 32288, 32289, 32597, 32599, 34685, 34687, 31940, 33231 of record in the office of the State Engineer.
8. Public Records in the Office of the State Engineer.
9. NRS 534.120, subsection 2.
10. NRS 533.025 and 533.030, subsection 1.
11. NRS 533.370 subsection 4.
12. NRS 534.120, subsection 2.