

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 48348,  
48349, 48350 AND 48351 FILED TO CHANGE)  
THE PLACE OF USE AND POINT OF)  
DIVERSION OF PORTIONS OF THE WATERS)  
OF AN UNDERGROUND SOURCE)  
HERETOFORE APPROPRIATED UNDER)  
APPLICATIONS 31425 AND 31426 IN)  
RAILROAD VALLEY (NORTHERN PART), NYE)  
COUNTY, NEVADA. )

RULING

GENERAL

I.

Application 48348<sup>1</sup> was filed on September 6, 1984, by Thomas E. Peddicord to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore appropriated under Application 31425. The existing point of diversion is described as being within the NE1/4 NW1/4 Section 2, T.4N., R.54E., M.D.B.&M., and the existing place of use is 640 acres located in Section 2, T.4N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 NW1/4 Section 7, T.4N., R.55E., M.D.B.&M., and the proposed place of use is 320 acres located in the NE1/4, E1/2 NW1/4, Lot 1 and Lot 4 of NW1/4 Section 7, T.4N., R.55E., M.D.B.&M. The existing and proposed manner of use is irrigation and domestic.

Application 48349<sup>1</sup> was filed on September 6, 1984, by Judith A. Peddicord to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore appropriated under Application 31425. The existing point of diversion is described as being within the NE1/4 NW1/4 Section 2, T.4N., R.54E., M.D.B.&M., and the existing place of use is 640 acres located in Section 2, T.4N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 7, T.4N., R.55E., M.D.B.&M., the proposed place of use is 320 acres located in the SE1/4, E1/2 SW1/4, Lot 5 and Lot 8 of the SW1/4 Section 7, T.4N., R.55E., M.D.B.&M. The existing and proposed manner of use is irrigation and domestic.

Application 48350<sup>1</sup> was filed on September 6, 1984, by Thomas L. Peddicord to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore appropriated under Application 31426. The existing point of diversion is described as being within the NE1/4 NW1/4 Section 35, T.5N., R.54E., M.D.B.&M., and the existing place of use is 640 acres located in Section 35, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 NW1/4 Section 14, T.4N., R.54E., M.D.B.&M., and the proposed place of use is 320 acres located in the N1/2 Section 14, T.4N., R.54E., M.D.B.&M. The existing and proposed manner of use is irrigation and domestic.

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<sup>1</sup> Public record in the office of the State Engineer.

Application 48351 was filed on September 6, 1984, by T. Jean Peddicord to change the point of diversion and place of use of 5.4 c.f.s., a portion of water from an underground source heretofore appropriated under Application 31426. The existing point of diversion is described as being within the NE1/4 NW1/4 Section 35, T.5N., R.54E., M.D.B.&M., and the existing place of use is 640 acres located in Section 35, T.5N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 14, T.4N., R.54E., M.D.B.&M., and the proposed place of use is 320 acres located in the S1/2 Section 14, T.4N., R.54E., M.D.B.&M. The existing and proposed manner of use is irrigation and domestic.

II.

Applications 48348, 48349, 48350 and 48351 were timely protested on February 1, 1985, by Roger Hockersmith on the following grounds:<sup>1</sup>

"On or about November 11, 1983, Roger Hockersmith entered into an agreement with the agent of several water application to purchase their water applications. Said applications included the underlying applications from whence the herein protested application originated. (Application Nos. 31,424 through 31,438, excluding 31,428 and 31,432)

Hockersmith thereafter was joined by a third party who was to assist in the financing and development of a project conceived by Hockersmith and involving said water applications. Said third party executed a non-disclosure agreement whereby it agreed not to use any proprietary information accumulated by Hockersmith and utilized by him in the creation of the project.

Notwithstanding said non-disclosure agreement, said third party, under the guise of an amendment of said agreement of November 11, 1983, named itself as the purchaser of said water applications; acquired quitclaim deeds for said water applications from the aforesaid agent; and usurped and put into operation Hockersmith's said project for the sole use and benefit of said third party.

Hockersmith is informed and believes and therefore alleges that the above named applicant is not a bona-fide purchaser for value and that he, Hockersmith, is the true owner of the protested application.

Hockersmith is contemplating an action to determine ownership and respectfully requests that the State Engineer take no action on the above named application for change of point of diversion and place of use until the true owner of said water application is determined."

III.

Water Resources-Reconnaissance Series Report 60, titled "Water-Resources Appraisal of Railroad and Penoyer Valleys, East-Central Nevada", was prepared cooperatively by the Geological Survey, U.S. Department of the Interior, and State of Nevada, Department of Conservation and Natural Resources. For the purposes of this report, Railroad Valley was divided into northern and southern parts.<sup>2</sup>

IV.

A public administrative hearing was held before the State Engineer on May 2, 1985. Evidentiary presentations were made by the applicants and protestants in the matter set forth herein.<sup>3</sup>

**FINDINGS OF FACT**

I.

The perennial yield of a hydrologic system is the maximum amount of water of usable chemical quality that can be consumed economically each year for an indefinite period of time. If the perennial yield is continually exceeded, ground water levels will decline until the ground water reservoir is depleted of water of usable quality or until the pumping lifts become uneconomical to maintain. Perennial yield cannot exceed the natural replenishment to an area indefinitely, and ultimately is limited to the maximum amount of natural discharge that can be salvaged for beneficial use.<sup>2</sup>

II.

For long-term natural or near-natural conditions, ground water inflow to and outflow from an area are about equal, assuming that climate conditions remain reasonably constant. For Railroad Valley, Northern Part, the estimate of ground water inflow and outflow which is considered to be the perennial yield of the hydrologic ground water basin is 75,000 acre-feet annually.<sup>2</sup>

III.

Permits and certificates have been issued under existing rights for less than 27,000 acre-feet annually of ground water within Railroad Valley, Northern Part.<sup>1</sup> Therefore, additional water is available for appropriation within the Railroad Valley, Northern Part, hydrologic ground water basin.

IV.

In a letter dated July 8, 1980, the State Engineer informed the Bureau of Land Management and the Division of State Lands that additional water was available for appropriation within Railroad Valley, Northern Part.<sup>1</sup>

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<sup>2</sup> Water Resources-Reconnaissance Series Report 60.

<sup>3</sup> See public administrative hearing transcript of May 2, 1985.

V.

By letter dated November 26, 1984, the United States Department of Interior, Bureau of Land Management, issued entry on four (4) Desert Land Entries which correspond with Applications 48348, 48349, 48350 and 48351. The Bureau of Land Management entries are:<sup>1</sup>

<u>BLM ENTRY NO.</u>	<u>DATE ISSUED</u>	<u>NAME</u>	<u>LOCATION</u>
N-40279	11/26/84	Thomas E. Peddicord	T.4N., R.55E., Sec. 7 N1/2
N-40272	11/26/84	T. Jean Peddicord	T.4N., R.54E., Sec. 14 S1/2
N-40271	11/26/84	Thomas L. Peddicord	T.4N., R.54E., Sec. 14 N1/2
N-40280	11/26/84	Judith A. Peddicord	T.4N., R.55E., Sec. 7 S1/2

VI.

A quitclaim deed dated July 5, 1984, was filed with the office of the State Engineer on August 20, 1984, quitclaiming Applications 31425 and 31426 to Nevada Agri Business Corporation of Reno, Nevada. Subsequently an original notarized deed dated February 19, 1985, transferred 1/2 interest in Application 31425 to Thomas E. Peddicord and 1/2 interest to Judith A. Peddicord, and 1/2 interest in Application 31426 to Thomas L. Peddicord and 1/2 interest to T. Jean Peddicord.<sup>4</sup>

VII.

At the administrative hearing held before the State Engineer on May 2, 1985, no evidence was presented by the protestant to substantiate the grounds of the protest.<sup>3</sup> The title of ownership to water rights Applications 31425 and 31426 and corresponding Applications to change 48348, 48349, 48350 and 48351, as reflected on the records of the State Engineer's office, corresponds to the respective Desert Land Entries on the records of the Bureau of Land Management. The applicant under the subject applications to change has demonstrated that he controls the land on which he plans to place the water to beneficial use.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.<sup>5</sup>

II.

The deeds of transfer on file with the State Engineer are in proper form and a transfer of title of Applications 31425 and 31426 to the applicants under Applications 48348, 48349, 48350 and 48351 have been made accordingly on the records on file in the State Engineer's office.<sup>1</sup>

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<sup>4</sup> See deeds on file under Application 31424.

<sup>5</sup> NRS Chapters 533 and 534.

III.

There is no record of evidence to support the grounds of the protest, therefore, the State Engineer concludes that the protests have no merit.

IV.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>6</sup>

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

V.

There is unappropriated water at the source and the granting of permits under Applications 48348, 48349, 48350 and 48351 would not adversely affect existing rights or be detrimental to the public interest and welfare.

**RULING**

The protest to the granting of Applications 48348, 48349, 48350 and 48351 is herewith overruled and permits will be granted subject to existing rights.

Respectfully submitted,

  
PETER G. MORROS  
State Engineer

PGM/CT/bl

Dated this 18th day of  
March, 1986.

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<sup>6</sup> NRS 533.370.