

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 31430,
31431, 48350 AND 48351 FILED TO
APPROPRIATE THE PUBLIC WATERS FROM
AN UNDERGROUND SOURCE WITHIN THE
RAILROAD VALLEY (NORTHERN PART))
GROUNDWATER BASIN IN NYE COUNTY,
NEVADA.)

RULING

GENERAL

I.

Application 31430¹ was filed on May 3, 1977, by Last Chance Mining Co., Inc. and later assigned to Stephana J. Lissolo and Warren Bradshaw to appropriate 10.8 c.f.s. of water from an underground source to irrigate 640 acres of land within Section 12, T.4N., R.54E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 12, T.4N., R.54E., M.D.B.&M.

Application 31431¹ was filed on May 3, 1977, by Tenabo Gold Mining Co., Inc. and later assigned to Russell C. and Jean Ann Koehler to appropriate 10.8 c.f.s. of water from an underground source to irrigate 640 acres of land within Section 24, T.4N., R.54E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 24, T.4N., R.54E., M.D.B.&M.

Permit 48350 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 heretofore appropriated under Permit 31426. The permit was issued on March 31, 1986 for irrigation and domestic purposes within the N $\frac{1}{2}$ Section 14, T.4N., R.54E., M.D.B.&M. The proposed point of diversion is described as being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, T.4N., R.54E., M.D.B.&M. The existing place of use was 640 acres of land located within Section 35, T.5N., R.54E., M.D.B.&M. The existing point of diversion is described as being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, T.5N., R.54E., M.D.B.&M.¹

Permit 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 heretofore appropriated under Permit 31426. The permit was issued on March 31, 1986, for irrigation and domestic purposes within the S $\frac{1}{2}$ Section 14, T.4N., R.54E., M.D.B.&M. The

¹ Public record in the office of the State Engineer.

proposed point of diversion is described as being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 14, T.4N., R.54E., M.D.B.&M. The existing place of use was 640 acres of land located within Section 35, T.5N., R.54E., M.D.B.&M. The existing point of diversion is described as being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, T.5N., R.54E., M.D.B.&M.¹

II.

A timely protest was filed to the granting of Applications 48350 and 48351 by Roger Hockersmith. The grounds of the protest are as follows:²

On or about November 11, 1983, Roger Hockersmith entered into an agreement with the agent of several water applicants 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.

² Public record in the office of the State Engineer filed under Applications 58350 and 48351.

FINDINGS

I.

Records and information available to the State Engineer indicate that Applications 31430, 31431, 48350 and 48351 were filed in support of Desert Land Entry and Carey Act applications.²

II.

By letter dated April 9, 1990, the United States Department of Interior, Bureau of Land Management, notified the State Engineer that the following Desert Land Entry and Carey Act applications had been closed and the case files are dead.²

<u>BLM ENTRY NO.</u>	<u>NAME</u>	<u>LAND DESCRIPTION</u>
N-32337	Last Chance Mining Co.	T.4N., R.54E., Sec's. 1, 2, 11, 12 T.5N., R.54E., Sec's. 35 & 36
N-32339	Tenabo Mining Co.	T.4N., R.54E., Sec's. 13, 14, 24
N-40271	Thomas L. Peddicord	T.4N., R.54E., Sec. 14, N $\frac{1}{2}$
N-40272	Jean T. Peddicord	T.4N., R.54E., Sec. 14, S $\frac{1}{2}$
N-40277	Mary Ann Connealy	T.4N., R.54E., Sec. 2, NE $\frac{1}{4}$ T.5N., R.54E., Sec. 35, SE $\frac{1}{4}$

III.

The applicants under Applications 31430, 31431, 48350 and 48351 do not own or control the land described under the place of use of the applications.

IV.

The protest of applications 48350 and 48351 was overruled by State Engineer's Ruling dated March 18, 1986,³ and permits were issued on March 31, 1986. However, by letter dated June 22, 1988, the Bureau of Land Management advised the State Engineer that the Desert Land Entries to which these waters are appurtenant were cancelled.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.⁴

II.

Applications 31430, 31431, and Permits 48350 and 48351 were filed in support of Desert Land Entries and Carey Acts. The Desert Land Entry and Carey Act applications described under II of Findings have been closed on the records of the Bureau of Land Management, therefore, the applicants do not own or control the land described under the place of use of applications and cannot demonstrate the ability to place the water to beneficial use.

III.

To grant applications and permits to appropriate the public water for irrigation on lands the applicant does not own or control or where the applicant cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

³ State Engineer's Ruling No. 3329 - 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.

⁴ NRS Chapters 533 and 534.

RULING

Permits 48350 and 48351 are hereby cancelled and Applications 31430 and 31431 are herewith denied on the grounds that to grant the applications for irrigation purposes on lands that the applicant does not own or control and cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

Respectfully submitted



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SW/bk

Dated this 21st day of

 May , 1990.