

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

IN THE MATTER OF APPLICATION 48355, )  
FILED TO CHANGE THE PLACE OF USE AND )  
POINT OF DIVERSION OF A PORTION OF )  
THE WATERS OF AN UNDERGROUND SOURCE )  
HERETOFORE APPROPRIATED UNDER )  
APPLICATION 31429 AND APPLICATION )  
47630 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE IN RAILROAD VALLEY (NORTHERN )  
PART), NYE COUNTY, NEVADA. )

RULING

GENERAL

I.

Application 31429 was filed on May 3, 1977, by Last Chance Mining Co., Inc. to appropriate 10.8 c.f.s. of water from an underground source for irrigation purposes on 640 acres within Section 1, T.4N., R.54E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 1, T.4N., R.54E., M.D.B.&M.<sup>1</sup>

II.

Application 47630 was filed on January 30, 1984, by Central Nevada Water Co. to appropriate 5.4 c.f.s. of water from an underground source for irrigation and domestic purposes on 320 acres within E1/2 Section 7, T.4N., R.54E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 7, T.4N., R.54E., M.D.B.&M.<sup>1</sup>

III.

Application 48355 was filed on September 6, 1984, by Christine Tom 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 31429. The existing point of diversion is described as being within the NW1/4 NE1/4 Section 1, T.4N., R.54E., M.D.B.&M., and the existing place of use is 640 acres located in Section 1, T.4N., R.54E., M.D.B.&M.

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

The proposed point of diversion is described as being within the SE1/4 SW1/4 Section 7, T.4N., R.54E., M.D.B.&M., and the proposed place of use is 320 acres located in the S1/2 S1/2 Section 7, and N1/2 N1/2 Section 18, T.4N., R.54E., M.D.B.&M. The existing and proposed manner of use is irrigation and domestic.<sup>1</sup>

#### IV.

Application 48355 was 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 applicants to purchase their water applications. Said applications included the underlying applications from whence the herein protested application originated. (Application No. 31429).

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."

V.

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>

VI.

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 for Application No's. 31429 and 48355.<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>

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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.

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 24,575 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>

V.

In a letter dated March 21, 1990, to the Department of Conservation and Natural Resources, Division of State Lands, the State Engineer's Office requested written notification of any filings of Carey Act applications by anyone in Sections 7 and 16, T.4N., R.54E., M.D.B.&M.<sup>1</sup>

VI.

In a letter dated May 4, 1990, to the State Engineer's Office, the Division of State Lands found no Carey Act applications on file for land within Sections 7 and 16, T.4N., R.54E., M.D.B.&M.

VII.

By letter dated July 20, 1990, the United States Department of Interior, Bureau of Land Management, issued entry on one (1) Desert Land Entry which corresponds with Application 48352. The Bureau of Land Management entry is:<sup>1</sup>

<u>BLM</u> <u>ENTRY NO.</u>	<u>DATE</u> <u>ISSUED</u>	<u>NAME</u>	<u>LOCATION</u>
N-40268	7/20/90	Christine K. Tom	T.4N., R.54E., Sec. 7 Lot 4, SE1/4 SW1/4, S1/2 SE1/4; Sec. 18, Lot 1, N1/2 E1/4, NE1/4 NW1/4

VIII.

A quitclaim deed dated July 5, 1984, was filed within the office of the State Engineer on August 20, 1984, quitclaiming Application 31429 to Nevada Agri-Business Corporation of Reno, Nevada. Subsequently an original notarized deed dated February 19, 1985, transferred 1/2 interest in Application 31429 to Christine Tom and 1/2 interest to Steven L. Peddicord.<sup>4</sup>

IX.

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 Application 31429 and corresponding Application to change 48355 as reflected on the records of the State Engineer's office, corresponds to the respective Desert Land Entry N-40268 on the records of the Bureau of Land Management in the name of Christine Tom.

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<sup>4</sup> See deeds on file under Application 31324.

X.

The applicant under the subject application to change has demonstrated that he controls the land on which he plans to place the water to beneficial use. The applicant under Application 47630 has not 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 Application 31429 to the applicant under Application 48355 has been made accordingly on the records on file in the State Engineer's office.<sup>1</sup>

III.

There is no record of evidence to support the grounds of the protest for Application 48355, therefore, the State Engineer concludes that the protest has no merit.

IV.

Application 47630 filed by Central Nevada Water Co. requests water rights be granted on lands the applicant has no control of and cannot put to beneficial use.

V.

There is unappropriated water at the source and the granting of permits under Application 31429 which is changed by Application 48355 would not adversely affect existing rights or be detrimental to the public interest and welfare.

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

VI.

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

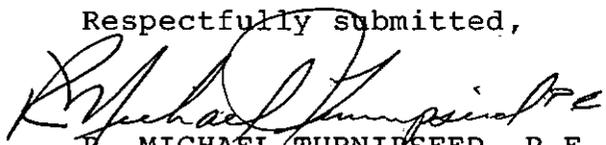
- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

RULING

Application 31429 is hereby granted and a permit will be issued upon receipt of the statutory permit fee with the understanding that it will be simultaneously abrogated by Application 48355. The protest to the granting of Application 48355 is hereby overruled and a permit will be granted under Application 48355 upon receipt of statutory permit fees, subject to existing rights.

Application 47630 is hereby denied on the grounds that to grant an application 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.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/DJL/pm

Dated this 18th day of  
October, 1990

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<sup>6</sup> NRS 533.370.