

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

IN THE MATTER OF PROTESTED APPLICATION 57257)
FILED TO APPROPRIATE THE UNDERGROUND WATERS)
OF OASIS VALLEY (228), NYE COUNTY, NEVADA.)

RULING

4180

GENERAL

I.

Application 57257 was filed on March 3, 1992, by the Beatty General Improvement District (BGID) to appropriate 2 cfs for the irrigation of 65 acres, located within the limits of the Town of Beatty, in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 18, T.12S., R.47E., M.D.B.&M. The proposed point of diversion is located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 18.¹

II.

Application 57257 was timely protested by George E. and LaRene M. Younghans on the grounds that:

We own a ranch in Oasis Valley that is fed by spring water. With the current water problems with the Beatty Water & Sanitation(sic) water system and their requirements to seek additional water sources, plus the mining industries requirement for water, we are afraid the condinued(sic) "well" development will lower the water table in the Oasis Valley and eventually reduce the flow of our springs. This would destroy our livelihood and the domestic tranquility of this ranch.

Therefore the protestant requests that the application be denied.²

III.

Application 57257 was also timely protested by the United States Department of the Interior, National Park Service (NPS), on the grounds summarized by the following:

¹ File No. 57257, official records in the Office of the State Engineer.

² Exhibit No. 3, Public Administrative Hearing before the State Engineer, September 14, 1993.

1. The public interest will not be served if water and water-related resources in the nationally important Death Valley NM, are diminished or impaired as a result of the diversion proposed by this application.
2. The diversion proposed by this application will reduce or eliminate the flows of springs in Death Valley NM which are discharge areas for regional ground-water flow systems, thereby impairing the senior NPS water rights.
3. The diversion proposed by this application is located in the Oasis Valley Hydrographic Area. Since this basin's water resources are already overcommitted, there is no water remaining to appropriate.

Therefore, the Protestant requests that Application 57257 be denied.³

IV.

On April 2, 1980, the State Engineer designated the Oasis Valley Groundwater Basin, as a basin in need of additional administration in accordance with NRS 534.120.⁴

V.

On September 14, 1993, a public administrative hearing was held to consider protested Application 57257.⁵

³ Exhibit No. 4, Public Administrative Hearing before the State Engineer, September 14, 1993.

⁴ State Engineer's Order No. 741, April 2, 1980, official records in the Office of the State Engineer.

⁵ Exhibit No. 1, Public Administrative Hearing before the State Engineer, September 14, 1993.

FINDINGS OF FACT

I.

Because the Death Valley National Monument (DVNM) is located down-gradient from the Oasis Valley,⁶ the National Park Service feels that the approval of Application 57257 will result in a reduced flow of springs in Death Valley National Monument.³ The National Park Service holds water rights issued by the California Water Resources Control Board for these springs, which provide water that is essential for the operation of the park and for the preservation of vegetation and wildlife habitat.⁷

The Applicant feels that the allegation of reduced flows in Death Valley National Monument springs is only an unproven theory. There presently exists a monitoring plan to assess the effects of the Lac Minerals Bullfrog Mine de-watering operation in which a total of 3,224 AFA is permitted to be withdrawn from the Amargosa Desert Groundwater Basin. The mining activities and the monitoring wells are located between the proposed point of diversion of Application 57257 and the Death Valley National Monument.⁸ The Applicant has proposed an additional monitoring plan and has proposed to discontinue the pumping of groundwater under Application 57257 if it is demonstrated that existing water rights are harmed.⁹

The behavior of the underground waters in the Oasis Valley Hydrographic Basin and their relationship to the regional

⁶ Exhibit No. 22, Public Administrative Hearing before the State Engineer, September 14, 1993.

⁷ Exhibit No's. 7, 14-18, Public Administrative Hearing before the State Engineer, September 14, 1993.

⁸ File No's. 51841 through 58148, official records in the Office of the State Engineer.

⁹ Exhibit No. 25 and Transcript p. 60, Public Administrative Hearing before the State Engineer, September 14, 1993.

groundwater system are not fully understood.¹⁰ The State Engineer finds that the long term effect on the springs in Death Valley National Monument, caused by the proposed groundwater pumping under Application 57257, cannot be predicted with certainty. The State Engineer further finds that the existing and proposed monitoring plans appear to be appropriately located to detect any negative impact to the springs at the Death Valley National Monument that may be caused by the removal of 325 AFA of groundwater under Application 57257.

II.

Presently, the driving range, two ball fields, the football field and a park are all watered from the Town of Beatty municipal water supply.¹¹ Under Application 57257, the Applicant proposes to irrigate the above mentioned areas, as well as a new nine-hole golf course, with water that is unsuitable for municipal use, thereby decreasing the summer demand on the Town of Beatty water supply.¹¹ The State Engineer finds that the proposed use of water under Application 57257 is the best possible use of this poor quality water. The State Engineer further finds that it is in the public interest to replace the irrigation of the above mentioned areas with water as proposed under Application 57257.

III.

The National Park Service feels that the Oasis Valley Ground Water Basin is over-appropriated in that existing appropriations of water exceed the perennial yield.¹² The Beatty Water and Sanitation District (District) provides water service to the Town of Beatty and presently has water rights totalling 1,163 acre feet

¹⁰ Exhibit No. 4, Public Administrative Hearing before the State Engineer, September 14, 1993. Several hydrological reports are referenced in the protest and there appears to be agreement as to the complexity of the groundwater flow regime.

¹¹ Exhibit No. 2, Public Administrative Hearing before the State Engineer, September 14, 1993.

¹² Exhibit No's. 4 and 22, Public Administrative Hearing before the State Engineer, September 14, 1993.

annually.¹³ The State Engineer finds that Application 57257 could be approved with the condition that it be supplemental to the existing water rights held by the Beatty Water and Sanitation District, and the quantity of water already appropriated would not increase.

IV.

The Younghans protested Application 57257 on the grounds that additional pumping of groundwater will cause a reduction in the flow of springs, on which they depend to support the operation of their ranch.² The Younghans hold water rights to the waters of these springs that are located in portions of Sections 28 and 33, T.10S., R.47E., M.D.B.&M.¹⁴ These locations are approximately 10 miles in a direction that is up-gradient from the point of diversion of Application 57257. The State Engineer finds that the approval of Application 57257 will have no adverse effect on the Younghans's springs and will cause no conflict with their existing rights.

The Younghans were duly noticed of the hearing but were not present. The State Engineer finds that there is no evidence or testimony on the record supporting their protest.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.¹⁵

¹³ The total combined duty of Permits 20890, 22838, 22839, 38126, 52044 and 52045 is equal to 1,163 acre feet annually, official records in the office of the State Engineer.

¹⁴ File No's. 24460, 54200 and 60196, official records in the office of the State Engineer.

¹⁵ NRS 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:¹⁶

- 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.

III.

The State Engineer is unable to conclude that the proposed withdrawal of 235 AFA under Application 57257 would reduce the flow of the springs in Death Valley National Monument. However, any ill-effect on the regional groundwater flow system and the springs in Death Valley National Monument would be detected by either the existing monitoring system for the Lac Minerals Bullfrog Mine or the monitoring plan proposed by the Applicant. The Applicant will curtail the pumping under Application 57257 if it is determined that said pumping causes a reduction in the springs at the Death Valley National Monument.

IV.

If Application 57257 were approved with the condition that it be made supplemental to the existing rights held by the Beatty Water and Sanitation District, then there would be no increase in the quantity of water appropriated in the Oasis Valley Groundwater Basin.

V.

The groundwater at the location of the proposed well under Application 57257 does not meet drinking water standards and is not suitable for municipal use. It is suitable for the proposed use of irrigation of the ball fields, the golf course and the park. The State Engineer concludes that the proposed use under Application 57257 is the best use of this poor quality water.

¹⁶ NRS 533.370.

VI.

Presently, municipal water is being applied to the ball fields, the driving range and the park. Approval of Application 57257 would allow this good quality water to be available for municipal use within the Town of Beatty. This is especially important in the summer, when the municipal supply of good quality water cannot meet the demand. The State Engineer concludes that the approval of Application 57257 is in the public interest.

VII.

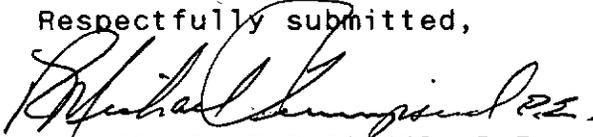
The State Engineer concludes that the approval of Application 57257 will have no adverse effects on the Younghans's springs, located about 10 miles up-gradient.

RULING

The protests to Application 57257, filed by the Younghans and the National Park Service, are hereby overruled and said application is approved subject to:

1. The condition that the quantity of water under Application 57257 is supplemental to existing rights held by the Beatty Water and Sanitation District;
2. The submittal of the monitoring plan under which the water level in a nearby well is monitored. The plan must also include the monitoring of all pumping by the Beatty Water and Sanitation District and the Beatty General Improvement District. The results of the monitoring shall be submitted to the State Engineer on a quarterly basis;
3. Existing rights; and
4. Payment of the statutory permit fees.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/pm

Dated this 14th day of
April, 1995.