

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

IN THE MATTER OF APPLICATIONS 62204 AND)
62205 FILED TO APPROPRIATE THE SURFACE)
WATERS OF UNNAMED STREAMS AND APPLICATION)
62206 FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE, ALL)
WITHIN THE BIG SMOKY VALLEY-TONOPAH FLAT)
GROUNDWATER BASIN (137A), NYE COUNTY,)
NEVADA.)

RULING

4628

GENERAL

I.

Application 62204 was filed on June 10, 1996, by Eastfield Resources (USA), Inc., to appropriate 1.0 cubic foot per second (cfs) of water from an unnamed stream. The proposed manner of use is for mining and milling purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T.2N., R.42E., M.D.B. & M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, T.3N., R.42E., M.D.B. & M.¹

II.

Application 62205 was filed on June 10, 1996, by Eastfield Resources (USA), Inc., to appropriate 1.0 cfs of water from an unnamed stream. The proposed manner of use is for mining and milling purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T.2N., R.42E., M.D.B. & M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T.3N., R.42E., M.D.B. & M.²

III.

Application 62206 was filed on June 10, 1996, by Eastfield Resources (USA), Inc., to appropriate 1.0 cfs of water from an underground source for mining and milling purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T.2N., R.42E., M.D.B. & M. The proposed point of

¹ File No. 62204, official records in the office of the State Engineer.

² File No. 62205, official records in the office of the State Engineer.

diversion is described as being located within the SE¼ NW¼ of Section 32, T.3N., R.42E., M.D.B. & M.³

FINDINGS OF FACT

I.

The State Engineer by Order No. 725 designated the Big Smoky Valley Groundwater Basin (137) as a groundwater basin in need of additional administration.⁴ By Order No. 828 the State Engineer declared the beneficial use of underground water for municipal, quasi-municipal and domestic purposes to be the preferred uses of the underground water within a portion of the Big Smoky Valley-Tonopah Flat Groundwater Basin.⁵ The safeguarding of the limited water supply necessitated and demanded that municipal, quasi-municipal and domestic use be declared the preferred use of the groundwater. The State Engineer finds that the point of diversion described under Application 62206 is located within the preferred use portion of the Big Smoky Valley-Tonopah Flat Groundwater Basin.

II.

Most of the available groundwater from the Tonopah Flat Groundwater Basin of suitable quality for municipal purposes occurs within the designated preferred use area and underground water pumped from this area is used by the City of Tonopah under Permit 44454, Certificate 11789, for municipal supply. The State Engineer finds that the need to protect the limited potable underground water resources found within the Tonopah Flat Groundwater Basin necessitates the denial of any new applications which request

³ File No. 62206, official records in the office of the State Engineer.

⁴ State Engineer's Order No. 725, dated May 14, 1979, official records in the office of the State Engineer.

⁵ State Engineer's Order No. 828, dated November 4, 1983, official records in the office of the State Engineer.

additional new appropriations of underground water for non-preferred uses from within the designated preferred use area.

III.

Application 41987 was filed on August 8, 1980, by Nye County to appropriate 0.7 cfs of effluent water from the Town of Tonopah's existing wastewater treatment ponds. Remarks contained with the application state that the application was made to acquire primary rights to the sewage effluent from the Town of Tonopah's raw sewage lagoons. Application 41987 was permitted on April 28, 1981, for 0.7 c.f.s. of effluent water, not to exceed 510 acre-feet per annum with the manner of use to be determined by secondary applications.⁶ The State Engineer finds that the right to appropriate the effluent water generated by the Tonopah sewage treatment facility is currently held under Permit 41987 by Nye County.

IV.

Applications 62204 and 62205 originally requested appropriations of water from an underground source which was described within the applications as "down gradient underground seepage from the Tonopah Sewage Infiltration Plant". Both applications were returned to the applicant's agent on June 21, 1996, to allow for the correction of several technical and formatting errors which were found within the original applications. A corrected set of amended applications was returned to the State Engineer's office on July 11, 1996, with the source of the proposed appropriations changed to "unnamed stream" on both applications.^{1,2}

A comparison of the application map which was filed in the office of the State Engineer to support Applications 62204 and 62205 and the U.S.G.S., Mt. Butte, Nevada, 7.5 minute topographic map reveals that both of the points of diversion described under the subject applications are located down gradient within the

⁶ File No. 41987, official records in the office of the State Engineer.

drainage area of any water generated by the Tonopah sewage treatment plant which is less than 1.5 miles east of the applicant's western most proposed surface water diversion. The State Engineer finds that the location of the proposed points of diversion in relation to the Tonopah sewage treatment facility, creates a high probability that the surface and subsurface flows generated by the treatment plant are major contributors to the water resource sought for appropriation under Applications 62204 and 62205.

V.

Application 62204 and 62205 request appropriations of surface water from an unnamed stream which derives a significant portion, if not all of its surface flow from water originating from the nearby Tonopah sewage treatment plant. In general, this source of water can not be regarded as a constant and reliable source, due in part to the fact that the beneficial use of the flow source is controlled by parties other than the applicants. The State Engineer finds that the unreliable nature of the water resource requested for appropriation, combined with the applicant's inability to control its quantity or duration, disqualifies this source of water as one which could provide adequate surface water for the mining project envisioned under Applications 62204 and 62205.

VI.

Application 62206 was filed to request an appropriation of underground water for mining and milling purposes, from a point of diversion which is located within that portion of the Big Smoky Valley-Tonopah Flat Groundwater Basin, where the utilization of underground water for municipal, quasi-municipal and domestic purposes is considered a preferred beneficial use of water. The State Engineer finds that the appropriation of underground water for mining and milling purposes as described under Application 62206 is not considered a preferred use within the Tonopah Flat

Groundwater Basin; and therefore, the application must be considered for denial.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁸

- 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.

Applications 62204 and 62205 request appropriations of surface water from unnamed streams which for the most part capture flows from a man developed source, more specifically, the Tonopah sewage treatment facility. Currently, the beneficial use of this water is fully controlled by Nye County under Permit 41987 with the future development of this resource established by yet to be filed secondary water rights applications. The State Engineer concludes that it would not be in the public interest to approve applications to appropriate surface water from an artificial man developed source which the applicant does not control.

IV.

Application 62206 requests an appropriation of underground water from a proposed point of diversion which is located within that portion of the Big Smoky Valley-Tonopah Flat Groundwater Basin where the appropriation of underground water for municipal, quasi-municipal and domestic purposes is considered a preferred use of

⁷ NRS § Chapters 533 and 534.

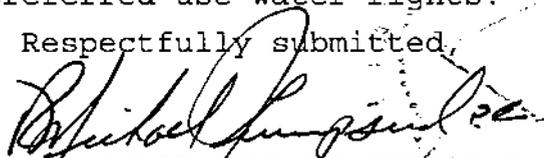
⁸ NRS § 533.370(3).

the available water resource. The State Engineer established the preferred use designation to safeguard the potable groundwater resource from which the City of Tonopah currently draws a portion of its municipal supply under Permit 44454, Certificate 11789. The State Engineer concludes that the approval of a new appropriation of underground water for a non-preferred beneficial use as described under Application 62206 from the preferred use portion of the Big Smoky Valley-Tonopah Flat Groundwater Basin would threaten to prove detrimental to the public interest and would conflict with the Tonopah Public Utilities nearby existing municipal water right.

RULING

Application 62204 and Application 62205 are hereby denied on the grounds that it would threaten to prove detrimental to the public interest to approve applications which request an appropriation of surface water from an artificial man developed source which the applicant does not control. Application 62206 is hereby denied on the grounds that the approval of a non-preferred appropriation of underground water from within an area which has been designated for preferred uses of underground water would threaten to prove detrimental to the public interest and would conflict with existing preferred use water rights.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 1st day of
May, 1998.