

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

IN THE MATTER OF APPLICATIONS 66120)
AND 66121 FILED TO CHANGE THE POINT OF)
DIVERSION, PLACE AND MANNER OF USE OF)
WATERS PREVIOUSLY APPROPRIATED)
FROM AN UNDERGROUND SOURCE WITHIN)
AMARGOSA DESERT GROUNDWATER BASIN)
(230), NYE COUNTY, NEVADA)

RULING

#5019

GENERAL

I.

Application 66120 was filed on March 7, 2000, by ATRJ General Partnership to change the point of diversion, place and manner of use of 1.0 cubic foot per second (cfs), not to exceed 140.7 million gallons annually (mga), of the water previously appropriated under Permit 51879. The proposed manner and place of use is for municipal purposes within Sections 2 through 28, inclusive, and Sections 33 through 36, inclusive, all within T.12S., R.46E., M.D.B.&M., Sections 7, 18, 19, 30, and 31, all within T.12S., R.46E., M.D.B.&M., and Sections 1, 2, and 3, all within T.13S., R.46E., M.D.B.&M. The existing manner and place of use was for quasi-municipal purposes within the S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.12S., R.46E., M.D.B.&M., the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 20, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 30, all within T.12S., R.47E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T.13S., R.46E., M.D.B.&M., with the existing point of diversion located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T.12S., R.47E., M.D.B.&M. The remarks section of the application indicates that the water is to be used by the Beatty Water and Sanitation District for service to its municipal customer base.¹

II.

Application 66121 was filed on March 7, 2000, by ATRJ General Partnership to change the point of diversion, place and manner of

¹ File No. 66120, official records in the office of the State Engineer.

use of 1.0 cfs, not to exceed 140.7 mga, of the water previously appropriated under Permit 51880. The proposed manner and place of use is for municipal purposes within Sections 2 through 28, inclusive, and Sections 33 through 36, inclusive, all within T.12S., R.46E., M.D.B.&M., Sections 7, 18, 19, 30, and 31 all within T.12S., R.47E., M.D.B.&M., and Sections 1, 2, and 3, all within T.13S., R.46E., M.D.B.&M. The proposed manner and place of use is for municipal purposes within the same place of use identified under Application 66120. The existing manner and place of use was the same as identified under Application 66120. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T.13S., R.46E., M.D.B.&M., with the existing point of diversion located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T.12S., R.47E., M.D.B.&M. The remarks section of the application indicates that the water is to be used by the Beatty Water and Sanitation District for service to its municipal customer base.²

III.

Applications 66120 and 66121 were protested by the United States Department of Interior, National Park Service ("NPS") on the grounds summarized as follows:^{1,2}

- A. The public interest will not be served if water-related resources in the nationally important Death Valley NP including Devil's Hole, are diminished or impaired as a result of the appropriation proposed by this application.

- B. The public interest will not be served by granting an appropriation to an applicant that does not control the point of diversion, means of conveyance, or the place of use.

² File No. 66121, official records in the office of the State Engineer.

- C. The appropriation proposed by this application will reduce or eliminate the flows of springs in Death Valley NP, which are discharge areas for regional ground water flow systems, thereby impairing senior NPS water rights.
- D. The appropriation proposed by this application, in combination with existing appropriations, will cause the water level at Death Valley to fall, thereby impairing the senior Federal reserved water right for Death Valley.
- E. There is no evidence of use under Permits 51879 and 51880. This appropriation should be considered a new appropriation of water from the Amargosa Desert Hydrographic Area. Since this area is already over committed, there is no water remaining to appropriate.

FINDINGS OF FACT

I.

Applications 66120 and 66121 were filed to change the point of diversion, place of use and manner of use of existing permitted water rights that are supplemental in nature. Permits 51879 and 51880 were issued by the State Engineer with the condition that they would share a total combined duty of water equal to 140.7 mga.^{3,4} The State Engineer finds that the amount of water proposed for transfer under Applications 66120 and 66121 is limited to a total combined duty of 140.7 mga.

II.

The NPS alleges Applications 66120 and 66121 represent new appropriations of underground water from the Amargosa groundwater basin and maintains there is no water available for appropriation from this source.^{1,2} Both of the subject applications request

³ File No. 51879, official records in the office of the State Engineer.

⁴ File No. 51880, official records in the office of the State Engineer.

changes in water that has already been permitted for appropriation by the State Engineer. Nevada Revised Statute § 533.325 provides that any person may change the point of diversion, place or manner of use of water already appropriated which is statutorily defined to include water for whose appropriation the State Engineer has issued a permit but which has not been applied to the intended use before an application to change the point of diversion, place or manner of use is made.⁵ The State Engineer finds that the approval of Applications 66120 and 66121 would not increase the amount of underground water that is permitted for appropriation on an annual basis from the Amargosa groundwater basin.

III.

The NPS alleges that since Applications 66120 and 66121 propose to move the points of diversion closer to Devil's Hole that in conjunction with existing water rights they will cause the water level at Devil's Hole to decline impairing its senior federal reserved water rights. Permits 51879 and 51880 share a common point of diversion that is located approximately 1.5 miles south of the town of Beatty, more specifically, within the NW¼ SW¼ of Section 13, T.13S., R.46E., M.D.B.&M. At this point, the detached unit of the Death Valley National Park ("DVNP") containing Devils Hole is located more than 40 miles to the southeast. The State Engineer's approval of the change in point of diversion requested under Applications 66120 and 66121 would move this existing point of diversion several miles to the southwest to a point that is still in excess of 40 miles northwest from Devil's Hole.⁶ The State Engineer finds that the approval of the subject applications would move the water rights originally permitted under Permits 51879 and 51880 to a new point of

⁵ NRS § 533.324.

⁶ BLM edition Surface Management 1:100 000, Beatty, Nevada-California and Death Valley Junction maps, 1993.

diversion without decreasing the linear distance separating the proposed point of diversion from Devil's Hole.

IV.

The existing points of diversion issued under Permits 51879 and 51880 are a common well site that is located approximately 40 miles northwest of Devil's Hole.⁶ The approval of Applications 66120 and 66121 would not reduce this distance with the proposed point of diversion still separated from Devil's Hole by more than 40 miles. The State Engineer finds that this minor repositioning of an existing point of diversion will not have an adverse effect upon the protestant's existing water rights.

V.

A portion of the NPS's protest was based upon the contention that the applicant does not control the lands upon which the proposed point of diversion and associated works of diversion and conveyance would be placed. By letter dated, May 11, 2000, the manager of the Beatty Water and Sanitation District identified the proposed point of diversion, described under the subject applications, as an existing well EW-4 that is owned by the Beatty Water and Sanitation District. Both Applications 66120 and 66121 reference the Beatty Water and Sanitation District as the entity that will eventually utilize the requested water for municipal purposes within its utility service area.^{1,2}

The State Engineer finds that the Beatty Water and Sanitation District controls the proposed well site and the place of use described under the subject applications. As to the issue of access across any public lands, the State Engineer finds that this specific matter must be resolved between the applicant and the BLM.

VI.

Information provided by the applicant's counsel indicates that the Beatty Water and Sanitation District will acquire ATRJ's interest in Applications 66120 and 66121, in addition to Permits 51879 and 51880, once the change applications are approved by the

State Engineer.¹ The State Engineer finds that the Beatty Water and Sanitation District will be the eventual owner of Applications 66120 and 66121 as well as the entity that will place the requested water to its intended beneficial use.

VII.

The NPS makes allegations in its protest that since it believes these applications are new appropriations of water, instead of recognizing these are changes of existing valid water rights, that the public interest will not be served if these water rights are granted because the use of water under them may impair water-related resources in Death Valley National Park. The State Engineer finds these are not new appropriations of water and use of the water will not be from wells any closer to the Park; therefore, the changes should not impair the Federal rights.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where⁸:

- a. the proposed use conflicts with existing rights; or
- b. the proposed use threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the NPS's contention that there is no water available for appropriation lacks merit and is in direct contradiction to the provisions of Nevada Water Law that

⁷ NRS chapters 533 and 534.

⁸ NRS chapter 533.370(3).

provide for the ability to change the point of diversion, place or manner of use of water already appropriated.

IV.

The State Engineer concludes the granting of change applications on water already appropriated from this source will not conflict with any existing water rights of the NPS as these applications seek to change water already appropriated.

V.

Applications 66120 and 66121 if approved would not increase the committed groundwater resource of the Amargosa groundwater basin or move the point of diversion any closer to Death Valley National Park. The State Engineer concludes that given these facts, the granting of the subject applications would not threaten to prove detrimental to the public interest.

RULING

The protests to Applications 66120 and 66121 are hereby overruled and Applications 66120 and 66121 will be granted subject to the existing rights, the payment of the statutory permit fees, and the transfer of title in said applications to the Beatty Water and Sanitation District.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MDB/hf

Dated this 7th day of

May, 2001.