

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

IN THE MATTER OF APPLICATION 47477)
FILED TO CHANGE THE POINT OF)
DIVERSION OF THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 42678,)
WITHIN THE BLACK MOUNTAINS AREA)
HYDROGRAPHIC BASIN (215), CLARK)
COUNTY, NEVADA.

RULING

#5235

GENERAL

I.

Application 47477 was filed on December 1, 1983, by Leroy Meek and Charles Thompson to change the point of diversion of 0.891 cubic feet per second of underground water previously appropriated under Permit 42678. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T.21S., R.63E., M.D.B.&M. The existing manner and place of use is for mining purposes within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T.21S., R.63E., M.D.B.&M.¹

II.

Application 47477 was timely protested by the Colorado River Commission on the following grounds.¹

The Colorado River Commission of Nevada (formerly the Division of Colorado River Resources) currently holds a permitted water right to appropriate water in the amount of 638 c.f.s. from the Las Vegas Wash. This right was granted by the State Engineer in Permit No. 29814 on November 28, 1975. Application No. 47477 is protested on the grounds it is in direct conflict with Permit No. 29814 assigned to the Commission. For additional reasons and grounds of this protest refer to the letter of transmittal.

¹ File Number 47477, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

When considering the merits of a protested application and the contentions brought forth in an associated protest, it is at the State Engineer's discretion as to whether or not an administrative hearing should be held to gain a full understanding of the issues before him.² The State Engineer finds that there is sufficient information available within the records of the Office of the State Engineer to formulate a ruling in the matter of protested Application 47477, and that an administrative hearing is not required.

II.

Before a water right application can be considered for approval, there must be a reasonable expectation that the water requested for appropriation will be placed to its intended beneficial use after the permit has been issued. The approval of a water right permit is dependent upon several factors, one of which is the surface management status of the land, which represents the place of use. The issue of land status is critical, when considering the fact that in excess of 80% of the land comprising the state is administered by various agencies of the federal government.³

The surface management land status map developed by the Bureau of Land Management for public distribution depicts the classification of the state's lands as they relate to their general administration. This map includes the township, range and section, cited within Application 47477, as its proposed place of use and well site. This area when located upon the land classification map lies within a larger area that has been

² Nevada Revised Statute 533.365(3).

³ Bureau of Land Management Surface Land Management Map, State of Nevada 1:500,000, 1990, distributed by the United States Department of the Interior.

withdrawn from public land status.³ This withdrawal passed control of the land to the United States Bureau of Reclamation under Public Law 3512, to provide public land for the Southern Nevada Water Supply Project. The withdrawal of this land places additional restrictions, some of which may preclude the locating of mining claims and the granting of mineral leases. The necessity to adhere the rules and regulations associated with this land classification is addressed by a letter from the Bureau of Reclamation dated August 18, 1997. This letter which is part of the record of correspondence maintained under Permit 47477, states that, "prior to the installation of a diversion, pipeline, or mineral material mining operation, the operator would be required to submit applications to this office. Assuming the water to be diverted is determined to be groundwater, rights-of-use documents would need to be issued for the water diversion and pipeline on Reclamation Land".¹ The State Engineer finds if for any reason the applicant is unable to obtain the required federal permits and licenses the State Engineer finds that there is no reasonable expectation that the water represented under Application 47477 would be placed to its intended beneficial use.

III.

By letter dated, October 13, 1998, the Bureau of Reclamation verified that the land status of the area in question had remained unchanged. This letter also advised the office of the State Engineer that the Bureau of Reclamation had not received any requests from the applicants, nor from any other individuals, for the purpose of using Reclamation land for the diversion, transmission, or beneficial use of the water on the land comprising the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28, T.21S., R.63E., M.D.B.&M.¹ Based upon information provided by the proper controlling federal agency, the State Engineer finds that the

applicants have not acquired permission from this agency to access and develop the project proposed under Application 47477.

IV.

Typically, a water right permit is granted with a set of limitations, which govern the manner in which water can be appropriated under the permit. Any change permits issued from an existing permit will inherit its terms and conditions. Permit 42678, which forms the base right permit, requested for change under Application 47477, was issued with the understanding that its approval does not extend the permittee the right of ingress and egress on the public land, nor does it waive the requirements that the permit holder obtain other permits from federal agencies.⁴ The State Engineer finds that a similar set of permit terms would be issued for any permit derived from Application 47477. Therefore the issue of the applicant requiring access to the restricted land comprising the place of use under Application 47477 remains critical in considering its approval.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an application that requests a change of an existing water right permit where:⁶

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed change threatens to prove detrimental to the public interest.

⁴ File No. 42678, official records of the Office of the State Engineer.

⁵ NRS chapter 533.

⁶ NRS § 533/370(3).

III.

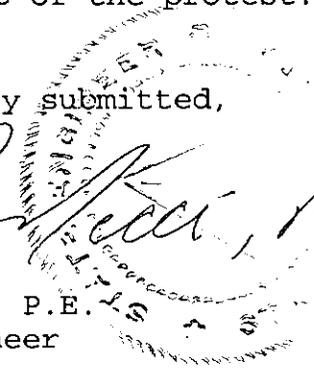
Application 47477 proposes to develop a point of diversion and place of use that is currently withdrawn from public use by the federal government. Any development of the subject lands by the applicants must occur under a set of federal guidelines that the applicants have failed to meet. This inability to access the point of diversion and place of use removes the expectation of a legal beneficial use of the water occurring under any permit issued from Application 47477. Under these circumstances, the State Engineer concludes that the approval of a water right permit for use upon a place of use that the applicants do not control or gained proper access to would threaten to prove detrimental to the public interest.

RULING

Application 47477 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer



HR/MDB/dl

Dated this 1st day of
May, 2003.