

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

IN THE MATTER OF APPLICATIONS 84546)
AND 84547 FILED TO CHANGE THE POINT)
OF DIVERSION AND PLACE OF USE OF)
PORTIONS OF THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
KOBEB VALLEY HYDROGRAPHIC BASIN)
(139), EUREKA COUNTY, NEVADA.)

RULING

#6315

GENERAL

I.

Application 84546 was filed on November 21, 2014, by McEwen Mining Inc., to change the point of diversion and place of use of 0.4456 cubic feet per second (cfs) of water from an underground source, a portion previously appropriated under Permit 82105. The proposed manner of use is unchanged for mining, milling and domestic purposes from January 1st through December 31st of each year. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T.22N., R.51E., M.D.B.&M. The existing point of diversion is described as being located within Lot 3 (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 2, T.21N., R.50E. M.D.B.&M. The proposed place of use is described as being located within portions of Sections 25, 26, 27 and 28, T.22N., R.49E.; all of Sections 2, 3, 10, 11, 13, 14, 15, 23 and 24 and portions of Sections 1, 4, 9, 12, 21, 22, 28, 29 and 30, T.22N., R.50E.; all of Sections 7, 18 and 19, T.22N., R.51E.; and a portion of Section 34 and all of Section 35, T.23N., R.50E., M.D.B.&M.¹

II.

Application 84547 was filed on November 21, 2014, by McEwen Mining Inc., to change the point of diversion and place of use of 0.6684 cfs of water from an underground source, a portion previously appropriated under Permit 82105. The proposed manner of use is unchanged for mining, milling and domestic purposes from January 1st through December 31st of each year. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.22N., R.50E., M.D.B.&M. The existing point of diversion is described as being located

¹ File No. 84546, official records in the Office of the State Engineer.

within Lot 3 (NE¼ NW¼) of Section 2, T.21N., R.50E. The proposed place of use is described as the same place of use as on Application 84546.²

III.

Permit 82105, the water right requested to be changed by Applications 84546 and 84547, is for a mining operation and was granted for 500 acre-feet annually (afa) of groundwater for a finite period of time with an expiration date of December 31, 2023.

IV.

Change Applications 84546 and 84547 were timely protested on February 5, 2015 by Kobeh Valley Ranch, LLC on the following grounds:

1. Protestant Kobeh Valley Ranch, LLC (hereinafter "Protestant"), asserts that the Kobeh Valley Groundwater Basin is fully appropriated, with Permit 82105 being the "last" application granted. The applications, if granted, for 500 afa, will result in the Kobeh Valley Groundwater Basin being over-appropriated.
2. Protestant is the owner of a multitude of groundwater rights, their source being the Kobeh Valley Groundwater Basin. Thus, the granting of the above-referred to applications will adversely conflict with the prior rights of the Protestant, which action is prohibited by law. (NRS 533.370(2).) The proposed points of diversion of applications 84546 and 84547 are too close in proximity to the wells and prior rights of Protestant and therefore conflict with existing groundwater rights of Protestant.
3. The applications, if granted, will adversely impact and conflict with existing surface water rights, including springs owned or controlled by third parties.
4. The applications, if granted, will prove detrimental to the public interest.
5. Protestant incorporates by reference the testimony and exhibits presented by Martin Etcheverry, the owner of the land at the site of the proposed applications and points of diversion, at the administrative hearings before the Nevada State Engineer culminating in Rulings 5966 and 6127, wherein Martin Etcheverry advanced reasons why the applications of Protestant, the subject of said hearings, should be denied. That testimony and the exhibits, as offered by Martin Etcheverry and others, discloses the pending applications, if granted, will conflict with and have an adverse impact on the prior rights of Protestant.
6. The Applicant does not own or control the real property upon which the point of diversion is located. That being true, the State Engineer must deny Applications 84546 and 84547.

Wherefore, it is respectfully requested the State Engineer deny, without the necessity of an administrative hearing or formal field investigation, the above-entitled applications.

² File No. 84547, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Nevada Revised Statutes § 533.365(4) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate or change the public waters of the state of Nevada. The State Engineer finds that sufficient evidence is available in the records of the Office of the State Engineer to evaluate the merits of Applications 84546 and 84547 and their associated protests and a hearing is not necessary.

II.

The first protest issue asserts that the Kobeh Valley Hydrographic Basin is fully appropriated and that granting change Applications 84546 and 84547 will result in the Kobeh Valley Groundwater Basin being over-appropriated. The State Engineer finds that change Applications 84546 and 84547 do not request an additional appropriation of water and will not add to the committed resource of the Kobeh Valley Hydrographic Basin. The State Engineer finds that change Applications 84546 and 84547 propose to change 200 afa and 300 afa respectively, or 500 afa of water already appropriated under Permit 82105, which is in good standing in the Office of the State Engineer. Furthermore, Permit 82105 was issued pursuant to NRS § 533.371, and as such, is not a permanent groundwater withdrawal in the basin. The State Engineer finds that change Applications 84546 and 84547 will not prove to be detrimental to the public interest.

III.

The second and third protest issues address the concern that Applications 84546 and 84547 are too close in proximity to Protestant's wells and will adversely conflict with water rights currently held by Kobeh Valley Ranch, LLC as well as surface water rights held by third parties. The State Engineer recognizes the fact that the Protestant does own water rights with a total combined duty of 11,300 afa in the Kobeh Valley Hydrographic Basin. Kobeh Valley Ranch, LLC has several points of diversion within the Kobeh Valley Hydrographic Basin, and the closest point of diversion to Application 84546, which is proposing a draught of 200 afa, is almost one mile distant and the furthest being over twelve miles distant. The closest point of diversion owned by Kobeh Valley Ranch, LLC to change Application 84547, which is proposing a draught of 300 afa, is almost two miles distant and the furthest being almost thirteen miles

distant. The State Engineer finds that in considering the distance between the multiple points of diversion owned by Kobeh Valley Ranch, LLC and the proximity to the proposed points of diversion of change Applications 84546 and 84547, and their proposed duties, that the water rights of Kobeh Valley Ranch, LLC will not be adversely impacted and change Applications 84546 and 84547 will not conflict with existing underground and surface water rights.

IV.

The Protestant, contends that the Applicant does not own or control the property upon which the described points of diversion for change Applications 84546 and 84547 are located. The State Engineer finds that McEwen Mining, Inc. and the Etcheverry Family Limited Partnership entered into a limited agreement.¹ This limited agreement authorizes McEwen Mining, Inc. access to the property (Eureka County Assessor Parcel Numbers 007-100-032 and 007-110-03) on which the proposed points of diversion for Applications 84546 and 84547 are described and that this issue is without merit.

V.

Finally, Protestant Kobeh Valley Ranch, LLC incorporates by reference, testimony and exhibits of the property owner, Martin Ethcheverry, which was given in administrative hearings in 2008 and 2010, before the State Engineer on the Protestant's water right applications pending at that time. Protestant asserts that the testimony and exhibits of Mr. Ethcheverry and others demonstrates that the pending applications will conflict with Protestant's existing rights. Nevada Revised Statute § 533.365(1) requires that protest grounds be set forth with reasonable certainty. The State Engineer finds the Protestant's bare reference to transcripts and exhibits from an administrative hearing on applications not under consideration in this ruling fails to sufficiently identify what evidence the Protestant contends demonstrates that there will be impacts to the Protestant's rights in the matter being addressed in this ruling. Further, the State Engineer finds that the testimony referred to that was offered in that hearing was for Etcheverry and not Kobeh Valley Ranch, LLC. The State Engineer also finds that, as previously stated, McEwen Mining Inc. and Etcheverry have entered into an agreement in order to mitigate potential conflicts and allow McEwen Mining, Inc. access to Etcheverry's properties. Notwithstanding, the State Engineer further finds that, as discussed above, the proposed change applications will not conflict with Protestant's existing rights.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

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

III.

The State Engineer concludes that the approval of the subject change applications will not result in additional withdrawal of groundwater from the Kobeh Valley Hydrographic Basin.

IV.

The State Engineer concludes that Applications 84546 and 84547 can be approved to move the existing point of diversion and place of use of Permit 82105 in the amount of 500 afa without conflicting with the multiple points of diversion of existing water rights of Protestant Kobeh Valley Ranch, LLC, which amount to 11,300 afa.

V.

The State Engineer concludes that McEwen Mining, Inc. and the Etcheverry Family Limited Partnership entered into a limited agreement. This limited agreement authorizes McEwen Mining, Inc. access to the property (Eureka County Assessor Parcel Numbers 007-100-032 and 007-110-03) on which the proposed points of diversion for change Applications 84546 and 84547 are described and that the protest issue that the Applicant does not have authorized access to the land is without merit.

³ NRS Chapters 533 and 534.

⁴ NRS § 533.370(2).

RULING

The protests to change Applications 84546 and 84547 are hereby overruled and the applications are hereby approved and will expire on December 31, 2023, subject to existing rights and payment of statutory permit fees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J.K. P.E.', is written over the typed name and title.

JASON KING, P.E.
State Engineer

Dated this 27th day of
May, 2015.