

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

IN THE MATTER OF PROTESTED APPLICATIONS 60312)
AND 60313 FILED TO APPROPRIATE THE UNDERGROUND)
WATERS OF THE MARYS RIVER AREA GROUNDWATER)
BASIN (42), ELKO COUNTY, NEVADA.)

RULING

4450

GENERAL

I.

Application 60312 was filed on August 2, 1994, by Donald D. Grock to appropriate 0.33 cubic feet per second (cfs), not to exceed 239 acre feet annually (AFA), of the underground waters of the Marys River Area Groundwater Basin, for industrial use at a gravel crushing operation located within the N $\frac{1}{4}$ NW $\frac{1}{4}$ Section 27, T.37N., R.58E., M.D.B.&M. The proposed point of diversion is located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 27. The current owner of record of Application 60312 is Frehner Construction Company, Incorporated.¹

II.

Application 60313 was filed on August 2, 1994, by Donald D. Grock to appropriate 0.67 cubic feet per second (cfs), not to exceed 960 AFA, of the underground waters of the Marys River Area Groundwater Basin, for the irrigation of 320 acres located within portions of the SE $\frac{1}{4}$ Section 27 and the NW $\frac{1}{4}$ Section 35, T.37N., R.58E., M.D.B.&M. The proposed point of diversion is located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 27. The current owner of record of Application 60313 is Frehner Construction Company, Incorporated.²

III.

Applications 60312 and 60313 were timely protested by the Pershing County Water Conservation District (PCWCD) on the grounds that the granting of said applications will effect the water table

¹File No. 60312, official records in the Office of the State Engineer.

²File No. 60313, official records in the Office of the State Engineer.

and drainage and adversely effect the decreed waters of the Humboldt River. PCWCD requests that Applications 60312 and 60313 be denied.^{1,2}

FINDINGS OF FACT

I.

The State Engineer has issued permits and certificates under which a total of approximately 28,000 acre feet annually (AFA) of water have been appropriated from the underground waters within the Marys River Area Groundwater Basin.³ The perennial yield for this basin, which is the quantity of water that may safely be withdrawn each year, is estimated to be 32,000 AFA.⁴ The State Engineer finds that there is additional water available for appropriation from this groundwater source.

II.

Application 60313 was filed to irrigate 320 acres located within the portions of the SE $\frac{1}{4}$ Section 27 and the NW $\frac{1}{4}$ Section 35, T.37N., R.58E., M.D.B.&M.² However, the current owner of Application 60313, Frehner Construction Company, is a construction contractor and not in the agricultural business. A representative of Frehner Construction indicated that the company does not intend to irrigate the 320 acres as stated in the application.⁵ The State Engineer finds that the Applicant does not intend to place the water under Application 60313 to beneficial use. Given this fact, the State Engineer further finds that the approval of Application 60313 is not in the public interest.

III.

Application 60312, on the other hand, is needed by the Applicant for a gravel crushing operation to support the Applicant's highway maintenance project. The Protestant presented

¹Official records in the Office of the State Engineer.

⁴Nowlin, Jon, Groundwater Quality in Nevada - A Proposed Monitoring Program, Open File Report 78-768, U.S.G.S., p. 193.

⁵Telephone conversation on August 27, 1996, between Jonathan C. Palm, Hearing Officer for the State Engineer and Jim Matthews, an employee of Frehner Construction Company.

no evidence that the approval of Application 60312 will have any impact on the waters of the Humboldt River. Additionally, the only underground water right located in the vicinity of the point of diversion and place of use of Application 60312 is a stockwater right for a minimal quantity of water.⁶ The State Engineer finds that the approval of Application 60312 would present no conflict with any existing water rights and would not threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

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

II.

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

- A. There is no unappropriated water at the proposed source;
- B. The proposed use conflicts with existing rights; or
- C. The proposed use threatens to prove detrimental to the public interest.

III.

It is a condition of each appropriation of groundwater acquired under NRS 534 that the right of the appropriator relates to a specific quantity of water and that the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion.⁹

IV.

Because the Applicant does not intend to place the water under Application 60313 to beneficial use, the approval of said

⁶Official records in the Office of the State Engineer.

⁷NRS Chapters 533 and 534.

⁸NRS 533.370.

⁹NRS 534.110(4).

application is not in the public interest. The State Engineer concludes that Application 60313 must be denied.

V.

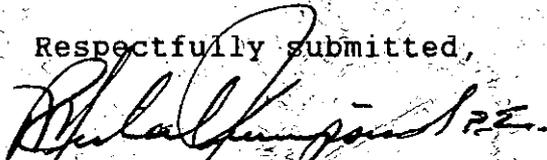
The approval of Application 60312 will not conflict with the flow of the Humboldt River or with any water right to the underground waters of the Marys River River Groundwater Basin. The State Engineer concludes that Application 60312 will not threaten to prove detrimental to the public interest and may be approved.

RULING

The protest to Application 60312 is hereby overruled and said Application is hereby approved subject to existing rights and the payment of the statutory permit fees.

Application 60313 is hereby denied on the grounds that the approval of said application threatens to prove detrimental to the public interest. No ruling is made regarding the protest to Application 60313.

Respectfully submitted,



E. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/ab

Dated this 24th day of
October, 1996.