

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

IN THE MATTER OF APPLICATION 53644 )  
FILED TO APPROPRIATE THE WATERS OF )  
AN UNDERGROUND SOURCE WITHIN THE )  
FERNLEY AREA GROUNDWATER BASIN (76) )  
LYON COUNTY, NEVADA. )

RULING

#4511

GENERAL

I.

Application 53644 was filed on June 30, 1989, by Steven Hamilton to appropriate 1.0 cubic foot per second (cfs) of water from an underground source for mining and manufacturing purposes within the SE $\frac{1}{4}$  of Section 25 and the N $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 36, T.20N., R.25E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 25, T.20N., R.25E., M.D.B.&M.<sup>1</sup>

II.

Application 35921 was filed on September 26, 1978, by Steven Hamilton to appropriate 2.0 cfs of water from an underground source for mining and manufacturing purposes within the same place of use and from the same point of diversion as described under Application 53644.<sup>2</sup> Permit 35921 was approved on September 18, 1980, with Certificate 12157 issued under said permit on June 6, 1989, for 0.185 cfs, not to exceed 0.07 million gallons annually.<sup>3</sup>

III.

Application 53644 was timely protested by the Truckee Carson Irrigation District (TCID) on the grounds that the application would tend to adversely affect adjacent and downstream adjudicated surface waters since the diversion would consumptively use water

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<sup>1</sup>File No. 53644, official records in the Office of the State Engineer.

<sup>2</sup>File No. 35921, official records in the Office of the State Engineer.

<sup>3</sup>Certificate No. 12157, official records in the Office of the State Engineer.

from a groundwater basin which has been fully appropriated and designated by the State Engineer.<sup>1</sup>

FINDINGS OF FACT

I.

Permit 35921 was issued with the provision that a totalizing meter must be installed and accurate measurements must be kept of water placed to beneficial use.<sup>2</sup>

II.

Proof of beneficial use is the final proof required under the terms of a permit to perfect a water right. This proof allows a permittee to submit the record of water use associated with a permit, often accompanied by twelve consecutive months of totalizing meter readings. The Proof of Beneficial Use submitted under Permit 35921 recorded a meter reading on July 1, 1987, of 9390 cubic feet which equates to 0.07 mga. Information within the permit and application files indicates that the period of metered water use represented only a small portion of the history of water use under the permit.<sup>1,2</sup> The State Engineer finds that the meter reading, which is the foundation of the amount of water issued under Certificate 12157, does not represent a true accounting of the total amount of water placed to beneficial use under Permit 35921.

III.

Application 53644 was filed to correct the discrepancy between the metered water use and the amount of water actually diverted to a beneficial use under Permit 35921. The State Engineer finds that the subject application requests no new appropriation of water, but rather was filed to convert the error in the filing of proof of beneficial use under Permit 35921.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action and determination.<sup>4</sup>

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>5</sup>

- 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.

Certificate 12157 was issued for an appropriation of water which was metered for only a short period of its total beneficial use; therefore, the recorded meter reading significantly understates the amount of water actually placed to beneficial use under Permit 35921. Application 53644 was filed to regain the nonmetered portion of Permit 35921 which was not taken into consideration when the Certificate was issued. The State Engineer concludes that the appropriation of water as described under the application does not represent a new appropriation of water, but rather is a request to refile on water which was initially diverted under Permit 35921.

IV.

The Truckee-Carson Irrigation District's protest to Application 53644 is centered primarily upon the detrimental effect a new appropriation would have upon existing adjudicated surface sources. The State Engineer concludes that there is no new

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<sup>4</sup>NRS Chapters 533 and 534.

<sup>5</sup>NRS 533.370(3).

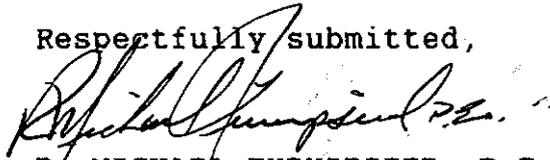
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appropriation of water under Application 53644; therefore, there is no additional negative impact on existing surface rights within the groundwater basin.

RULING

The protest to Application 53644 is hereby overruled and said application is hereby approved subject to existing rights and payment of the statutory permit fee.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MDB/ab

Dated this 11th day of  
March, 1997.