

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

IN THE MATTER OF APPLICATIONS 60384 )  
AND 60385 FILED TO APPROPRIATE THE )  
UNDERGROUND WATERS OF AN UNDERGROUND )  
SOURCE LOCATED WITHIN WARM SPRINGS )  
VALLEY (6-84), WASHOE COUNTY, NEVADA.)

RULING  
# 4711

GENERAL

I.

Application 60384 was filed on August 24, 1994, by Intermountain Land Co. to appropriate 6 cubic feet per second (cfs) of underground water from a geothermal reservoir for industrial purposes use within the NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$ , and SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 22, T.23N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 22.<sup>1</sup>

II.

Application 60385 was filed on August 24, 1994, by Intermountain Land Co. to appropriate 6 cfs of underground water from a geothermal reservoir for industrial purposes use within the NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$ , and SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 22, T.23N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 22.<sup>2</sup>

FINDINGS OF FACT

I.

The applicant and its agent were notified by mail dated August 22, 1996, to submit additional justification data and information to the State Engineer's office concerning the annual consumptive use of water under Applications 60384 and 60385. The State Engineer finds that the applicant was properly noticed of the request for additional information and that to date no information has been received in response to that request.<sup>1,2</sup>

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<sup>1</sup> File No. 60384, official records in the office of the State Engineer.

<sup>2</sup> File No. 60385, official records in the office of the State Engineer.

II.

The applicant and its agent were again notified by mail dated February 5, 1998, to submit the previously requested information. A time limit of ninety days was assigned for the submission of a response. The applicant and its agent were re-notified by certified mail dated February 13, 1998, to submit the previously requested information. A time limit of ninety days was assigned for the submission of a response or the applications would be subject to denial. Properly endorsed return receipts were received from the addressees on February 18 and February 25, respectively. The applicant responded by mail received in the State Engineer's office on April 15, 1998, and stated in part that "we currently have no project ongoing to use the geothermal water other than our farming for which we have certificated underground rights". The applicant requested that the applications be held in abeyance for an undetermined amount of time until it is able to develop a project to use the geothermal water.<sup>1,2</sup> The State Engineer finds that the applicant has no project to support Applications 60384 and 60385.

III.

The applicant was notified by certified mail dated May 29, 1998, that the intent of the appropriation process is distribute the resource according to beneficial use and that the lack of a defined use is a basis for denial of the applications. The applicant was instructed to submit within 180 days information requested on a project or the applications would be denied. A properly endorsed return receipt was received from the applicant on June 3, 1998. The State Engineer finds that the applicant was properly notified of the request for additional information and that to date no information has been received.<sup>1,2</sup>

CONCLUSIONS

I.

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

II.

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

- 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.

Before either approving or rejecting an application the State Engineer may require such additional information as will enable him to properly guard the public interest.<sup>5</sup>

IV.

The applicant and its agent were properly notified of the requirement for additional information concerning these applications and have failed to submit the requested information to the State Engineer's office. The State Engineer concludes that without the information requested, sufficient information is not available for the State Engineer to properly guard the public interest.

V.

The applicant has stated that they, "...have no project ongoing to use the geothermal water...." and requested the State Engineer hold the applications in abeyance. The State Engineer concludes that Nevada water law requires an applicant have an

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<sup>3</sup> NRS Chapters 533 and 534.

<sup>4</sup> NRS § 533.370 (3).

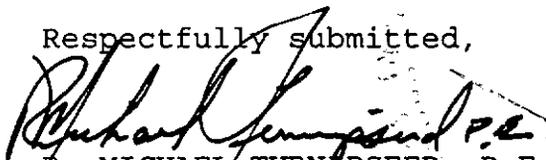
<sup>5</sup> NRS § 533.375.

intended beneficial use of the waters upon which it has filed an application.<sup>6</sup> The State Engineer concludes that an applicant must provide satisfactory proof of having a reasonable expectation to apply the water to the intended beneficial use with reasonable diligence and the applicant has no such proof.<sup>7</sup> The State Engineer concludes that since the applicant does not have a project in the works or envisioned and there is no justification to support any request to hold the applications in abeyance. The State Engineer further concludes that to merely hold applications in abeyance until an applicant can decide to pursue a project threatens to prove detrimental to the public interest as it increases the number of backlogged water right applications in the Division of Water Resources and is contrary to the beneficial use requirements of the law.

RULING

Applications 60384 and 60385 are hereby denied on the grounds that the applicant has no beneficial use for the waters applied for and to hold the applications in abeyance threatens to prove detrimental to the public interest.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MJA/cl

Dated this 23rd day of  
March, 1999.

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<sup>6</sup> NRS 533.030, 533.035, 533.045, 533.335.

<sup>7</sup> NRS § 533.370 (1) (c).