

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

IN THE MATTER OF APPLICATIONS)
65667 AND 65668 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
MESQUITE VALLEY/SANDY VALLEY)
HYDROGRAPHIC BASIN (163), CLARK)
COUNTY, NEVADA.)

RULING

5264

GENERAL

I.

Application 65667 was filed on November 22, 1999, by Calpine Corporation to appropriate 3.45 cubic feet per second (cfs), not to exceed 2,500 acre-feet annually (afa), of water from an underground source within the Mesquite Valley/Sandy Valley Hydrographic Basin, Clark County, Nevada, for industrial purposes (cooling of power generation units) within a portion of the W½ of Section 1, T.24S., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 2, T.24S., R.56E., M.D.B.&M.¹

II.

Application 65668 was filed on November 22, 1999, by Calpine Corporation to appropriate 3.45 cfs, not to exceed 2,500 afa, of water from an underground source within the Mesquite Valley/Sandy Valley Hydrographic Basin, Clark County, Nevada, for industrial purposes (cooling of power generation units) within a portion of

¹ File No. 65667, official records of the Office of the State Engineer.

the W½ of Section 1, T.24S., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 9, T.24S., R.56E., M.D.B.&M.²

FINDINGS OF FACT

I.

By letter dated March 9, 2000, the State Engineer requested Calpine Corporation to provide information as to whether it still had a viable project as proposed under these applications, including information as to whether the corporation had begun efforts to acquire the site and other necessary requirements for constructing the facility. By letter dated March 23, 2000, Calpine Corporation indicated that it was still actively developing the project in Sandy Valley and it had explored fuel supply, transmission capacity, electrical interconnection and project siting. The corporation indicated that it was preparing an application for a land lease through the United States Bureau of Land Management (BLM) anticipated to be filed within 180 days.

The letter indicated that the corporation hoped to prepare and have BLM approval of an environmental assessment to drill test wells within 120 days, and to begin the test well program and complete submission of the BLM application within a several month period. By letter dated May 22, 2000, the State Engineer requested the corporation respond within 180 days of its March 23,

² File No. 65668, official records of the Office of the State Engineer.

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2000, letter with a revised schedule for the project, including an estimated date by which it planned to place any water right granted to beneficial use. By letter dated October 10, 2000, Calpine Corporation responded to the State Engineer and indicated that it was still actively developing the project in Sandy Valley, but indicated the project was not progressing as originally planned, because Nevada Power and the BLM had initiated new processes for power project developers to follow. The letter indicated that Nevada Power had postponed the electrical interconnect evaluation for the Sandy Valley project in favor of evaluating the electrical interconnections for other Las Vegas-area projects, and that the corporation did not believe the use of BLM land for the project was feasible; therefore, it was looking for patented land for the project, and indicated it needed another 180 days to further refine the project. Finally, by certified letter dated May 21, 2003, the State Engineer again requested the Calpine Corporation inform him as to whether it still had a viable project, and indicated that the corporation was to provide said information within 30 days of the date of the letter. Signed receipts for the certified mailings were received in the Office of the State Engineer from the applicant and its agent on May 27, 2003. The State Engineer finds that no response was received to the request for updated information.

CONCLUSIONS

I.

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

II.

Before either approving or rejecting an application, the State Engineer may require such additional information from the applicant as will enable him to properly guard the public interest.⁴

III.

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

- 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 use or change threatens to prove detrimental to the public interest.

IV.

The applicant has failed to submit the information requested to the State Engineer's office. The State Engineer concludes that without the additional data sufficient information is not available to properly guard the public interest. The State Engineer concludes to grant a water right to an applicant that

³ NRS chapters 533 and 534.

⁴ NRS § 533.375.

⁵ NRS chapter 533.370(3).

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does not express an intent to go forward with the project would threaten to prove detrimental to the public interest.

RULING

Applications 65667 and 65668 are hereby denied on the grounds that the applicant has not submitted the data and information requested by the State Engineer's office, and that without this information granting of the applications would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 24th day of
July, 2003.