

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

IN THE MATTER OF APPLICATIONS 68278,)
68279, 68280, 68281, 68282, 68283, 68284, 68285,)
68286, 68287, 68288 AND 68289 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE)
STEPTOE VALLEY HYDROGRAPHIC BASIN)
(179), WHITE PINE COUNTY, NEVADA.)

RULING

#5466

GENERAL

I.

Application 68278 was filed on December 10, 2001, by Duke Energy White Pine, LLC to appropriate 5.0 cubic feet per second (cfs) of underground water for power plant purposes within portions of Section 1, all of Section 2, the E½ of Section 3, the E½ of Section 10, a portion of Section 11 and a portion of Section 12, T.24N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 1, T.24N., R.64E., M.D.B.&M.¹

II.

Application 68279 was filed on December 10, 2001, by Duke Energy White Pine, LLC to appropriate 5.0 cfs of underground water for power plant purposes within portions of Section 1, all of Section 2, the E½ of Section 3, the E½ of Section 10, a portion of Section 11 and a portion of Section 12, T.24N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 10, T.24N., R.64E., M.D.B.&M.²

III.

Application 68280 was filed on December 10, 2001, by Duke Energy White Pine, LLC to appropriate 5.0 cfs of underground water for power plant purposes within portions of Section 1, all of Section 2, the E½ of Section 3, the E½ of Section 10, a portion of Section 11 and a portion of Section 12, T.24N., R.64E., M.D.B.&M. The

¹ File No. 68278, official records in the Office of the State Engineer.

² File No. 68279, official records in the Office of the State Engineer.

proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T.24N., R.64E., M.D.B.&M.³

IV.

Application 68281 was filed on December 10, 2001, by Duke Energy White Pine, LLC to appropriate 5.0 cfs of underground water for power plant purposes within portions of Section 1, all of Section 2, the E $\frac{1}{2}$ of Section 3, the E $\frac{1}{2}$ of Section 10, a portion of Section 11 and a portion of Section 12, T.24N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T.26N., R.65E., M.D.B.&M.⁴

V.

Application 68282 was filed on December 10, 2001, by Duke Energy White Pine, LLC to appropriate 5.0 cfs of underground water for power plant purposes within portions of Section 1, all of Section 2, the E $\frac{1}{2}$ of Section 3, the E $\frac{1}{2}$ of Section 10, a portion of Section 11 and a portion of Section 12, T.24N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, T.24N., R.64E., M.D.B.&M.⁵

VI.

Application 68283 was filed on December 10, 2001, by Duke Energy White Pine, LLC to appropriate 5.0 cfs of underground water for power plant purposes within portions of Section 1, all of Section 2, the E $\frac{1}{2}$ of Section 3, the E $\frac{1}{2}$ of Section 10, a portion of Section 11 and a portion of Section 12, T.24N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T.25N., R.65E., M.D.B.&M.⁶

VII.

Application 68284 was filed on December 10, 2001, by Duke Energy White Pine, LLC to appropriate 5.0 cfs of underground water for power plant purposes within portions of Section 27, all of Sections 28 and 33, portions of the W $\frac{1}{2}$ of Section 34, T.20N., R.64E., M.D.B.&M., portions of the NW $\frac{1}{4}$ of Section 3 and the N $\frac{1}{2}$ of Section 4,

³ File No. 68280, official records in the Office of the State Engineer.

⁴ File No. 68281, official records in the Office of the State Engineer.

⁵ File No. 68282, official records in the Office of the State Engineer.

⁶ File No. 68283, official records in the Office of the State Engineer.

within T.19N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T.20N., R.64E., M.D.B.&M.⁷

VIII.

Application 68285 was filed on December 10, 2001, by Duke Energy White Pine, LLC to appropriate 5.0 cfs of underground water for power plant purposes within portions of Section 27, all of Sections 28 and 33, portions of the W $\frac{1}{2}$ of Section 34, T.20N., R.64E., M.D.B.&M., portions of the NW $\frac{1}{4}$ of Section 3 and the N $\frac{1}{2}$ of Section 4, within T.19N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T.20N., R.64E., M.D.B.&M.⁸

IX.

Application 68286 was filed on December 10, 2001, by Duke Energy White Pine, LLC to appropriate 5.0 cfs of underground water for power plant purposes within portions of Section 27, all of Sections 28 and 33, portions of the W $\frac{1}{2}$ of Section 34, T.20N., R.64E., M.D.B.&M., portions of the NW $\frac{1}{4}$ of Section 3 and the N $\frac{1}{2}$ of Section 4, within T.19N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T.20N., R.64E., M.D.B.&M.⁹

X.

Application 68287 was filed on December 10, 2001, by Duke Energy White Pine, LLC to appropriate 5.0 cfs of underground water for power plant purposes within portions of Section 27, all of Sections 28 and 33, portions of the W $\frac{1}{2}$ of Section 34, T.20N., R.64E., M.D.B.&M., portions of the NW $\frac{1}{4}$ of Section 3 and the N $\frac{1}{2}$ of Section 4, within T.19N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T.20N., R.64E., M.D.B.&M.¹⁰

XI.

Application 68288 was filed on December 10, 2001, by Duke Energy White Pine, LLC to appropriate 5.0 cfs of underground water for power plant purposes within portions of Section 27, all of Sections 28 and 33, portions of the W $\frac{1}{2}$ of Section 34, T.20N., R.64E., M.D.B.&M., portions of the NW $\frac{1}{4}$ of Section 3 and the N $\frac{1}{2}$ of Section 4,

⁷ File No. 68284, official records in the Office of the State Engineer.

⁸ File No. 68285, official records in the Office of the State Engineer.

⁹ File No. 68286, official records in the Office of the State Engineer.

¹⁰ File No. 68287, official records in the Office of the State Engineer.

within T.19N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 22, T.19N., R.64E., M.D.B.&M.¹¹

XII.

Application 68289 was filed on December 10, 2001, by Duke Energy White Pine, LLC to appropriate 5.0 cfs of underground water for power plant purposes within portions of Section 27, all of Sections 28 and 33, portions of the W½ of Section 34, T.20N., R.64E., M.D.B.&M., portions of the NW¼ of Section 3 and the N½ of Section 4, within T.19N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 15, T.19N., R.64E., M.D.B.&M.¹²

XIII.

Applications 68278 through 68289; inclusive, were timely protested by Kennecott Nevada Copper Company and White Pine County on grounds that will not be considered in this ruling.¹

FINDINGS OF FACT

I.

Before a water right application can be considered for approval, there must be a reasonable certainty that the water it requests to use will ultimately be placed to its intended beneficial use. A valuable tool in assisting the State Engineer in this determination is provided by the Nevada Revised Statutes §§ 533.370 and 533.375. The provisions found under NRS § 533.370 authorizes the State Engineer to request additional information from a water right applicant regarding his good faith to construct the works necessary to perfect the water right. This section of the Nevada water law also empowers the State Engineer to obtain proof from the applicant of his financial ability to develop his project as described upon the application with due diligence.

In addition, the State Engineer is authorized under NRS § 533.375 to request additional information as will enable him to properly guard the public interest.

Applications 68278 through 68289; inclusive, request large quantities of underground water to support a coal fired power plant. The magnitude of this request and the complexity and expense of the project creates a great concern on the State Engineer's

¹¹ File No. 68288, official records in the Office of the State Engineer.

¹² File No. 68289, official records in the Office of the State Engineer.

part regarding the applicant's ability to initiate, develop and complete the project. Under these circumstances the State Engineer finds that additional information must be obtained from the applicant to gain a full understanding of the water right applications and the project they support.

II.

The State Engineer's need for additional information was expressed in his letter to the applicant dated, July 9, 2004. This letter was sent by certified mail to the applicant and its agent at their respective addresses of record. Signed receipts for the certified mailings were received from both parties, signifying that they had been properly noticed in accordance with the policies of the Office of the State Engineer. The main focus of the letter was a series of questions relating to the viability of the proposed coal fired power plant. The applicant was also requested to provide an overview of the amount of progress that had been made in securing the necessary permits and right of ways needed to construct and operate the facility. In addition, the applicant was asked to supply information regarding the financing of the project. The applicant was allowed 90 days to respond to the letter, with the understanding that the failure to do so in a timely manner would result in a denial of the subject applications. After the 90-day period had expired, it was determined that the applicant had failed to respond to the State Engineer's request for additional information.¹ To this date, no information on this matter has been submitted to the State Engineer's office. The State Engineer finds that the applicant and its agent have failed to respond to the State Engineer's request for additional information.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:¹⁴

¹³ NRS chapter 533 and 534.

¹⁴ NRS § 533.370(4).

- 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.

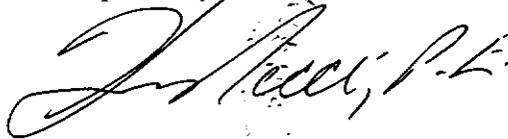
III.

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 water right permits to an applicant that does not express an intent to go forward with the project would prove detrimental to the public interest.

RULING

Applications 68278, 68279, 68280, 68281, 68282, 68283, 68284, 68285, 68286, 68287, 68288 and 68289 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, the approval of the applications would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MB/jm

Dated this 10th day of
January, 2005.