

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

IN THE MATTER OF APPLICATION 49458 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF MGM)
LAKE LOCATED IN TRUCKEE MEADOWS, WASHOE)
COUNTY, NEVADA.)

RULING

3952

GENERAL

I.

Application 49458 was filed on October 18, 1985 by Truckee Meadows Limited Partnership to appropriate 45 c.f.s. of water from MGM Lake for commercial (nonconsumptive cooling) purposes for non-contact cooling of a proposed municipal waste incineration facility located within the SW1/4 NE1/4 Section 12, T.19N., R.19E., M.D.B.&M. The point of diversion is described as being located within the SE1/4 SE1/4 Section 7, T.19N., R.20E., M.D.B.&M. Application 49458 became ready for the State Engineer's action January 3, 1986.¹

II.

Application 49458 was timely protested on December 30, 1985, by the Pyramid Lake Paiute Tribe of Indians on the following grounds:

1. A permit to appropriate water from MGM Lake should not be considered or granted in the absence of a permit to appropriate, store and utilize surface and/or underground water in MGM Lake.
2. Action on the requested appropriation should be postponed pending the outcome of the Pyramid Lake Tribe's pending applications to appropriate the waters of the Truckee River, Nos. 48061 and 48494, and of the Tribe's claim to the remaining unappropriated waters of the Truckee River under federal law.
3. The water that is the subject of Application No. 49458 cannot be appropriated because the Pyramid Lake Tribe has a prior right to all of the remaining surface and ground water of the Truckee River system that is not subject to valid existing rights set forth in the Orr Ditch Decree or

¹ Public record in the office of the State Engineer, Application 49458.

subsequently issued and perfected permits issued by the State Engineer.

4. Approving the proposed appropriation would be detrimental to the public interest and would be contrary to the federal and state laws protecting endangered species, and to the rights of the Pyramid Lake Tribe because it would result in increasing the temperature and further deterioration of the quality of the surface waters of the Truckee River.

Therefore the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.¹

III.

By letter dated December 13, 1985, the applicant's agent, Resource Concepts, Inc. submitted information to the State Engineer supporting the nonconsumptive use proposed by Application 49458. This letter concluded:

As you can determine from this brief summary of the proposed use of the MGM lake water, it's use will be nonconsumptive with the exception of the evaporative losses from the pond surface. I would like to caution you in the use of these numbers, since they are extremely preliminary, however, the intended use of the water is nonconsumptive as we have described in our application for appropriation.¹

FINDINGS OF FACT

I.

The State Engineer finds that by letter dated January 22, 1990 to the applicant, the Division of Water Resources sought to determine if the applicant still had interest in pursuing the appropriation proposed by Application 49458. By telephone conversation with the Division of Water Resources on February 28, 1990, Mr. Fred Gangi, representing the applicant, confirmed he had received the January 22, 1990 letter and provided a new address for the applicant.¹ No other information was received at that time.

II.

By certified mail dated January 12, 1993 the applicant was required to supply additional information to the Division of Water Resources as to whether the applicant still had interest in

pursuing the appropriation proposed by Application 49458. Additionally the applicant was requested to provide information regarding the right to use 45 cubic feet per second (c.f.s.) of water from the MGM Lake and to provide a detailed description of the cooling process and water temperatures so that the nonconsumptive use could be verified.¹

The State Engineer finds that the certified mail return receipt shows that the letter addressed to the applicant was received January 19, 1993.² To date there has been not reply to the letter dated January 12, 1993.¹

III.

The State Engineer finds that it would not be in the public interest to allow an application where the applicant has no access to the source of water and can not demonstrate the ability to place the water to beneficial use.

CONCLUSIONS

I.

The State Engineer has jurisdiction of 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 as will enable him to guard the public interest.⁴

III.

The State Engineer concludes that additional information is necessary in order to protect the public interest by insuring that the cooling process is totally non-consumptive, and that water from MGM Lake, is not consumed by evaporation or process losses.⁴

² See Certified Mail Return Receipt #P 668 457 224 in file 49458, public record in the office of the State Engineer.

³ NRS 533.325, NRS 533.335, NRS 533.340 and NRS 533.370.

⁴ NRS 533.375.

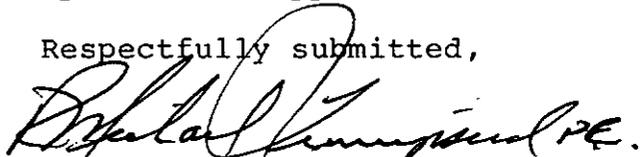
IV.

The applicant has been properly notified of the requirement for additional information concerning this application and has failed to submit the required information to the State Engineer's office. Therefore, sufficient information is not available to the State Engineer to guard the public interest.

RULING

Application 49458 is hereby denied on the grounds that the applicant has not submitted the information requested by the State Engineer's office, and therefore, the granting of said application without the additional information would not be in the public interest. No ruling is made on the protest to Application 49458.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/CAB/pm

Dated this 7th day of
April, 1993.