

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

IN THE MATTER OF APPLICATIONS )  
49598, 49599, 49600, 53297, 53298 )  
AND 53299 FILED TO APPROPRIATE )  
THE PUBLIC WATERS FROM AN )  
UNDERGROUND SOURCE WITHIN THE )  
IMLAY AREA GROUNDWATER BASIN )  
(72), PERSHING COUNTY, NEVADA )

RULING

**#4306**

GENERAL

I.

Application 49598 was filed on December 20, 1985, by Southern Pacific Land Company to appropriate 2.0 cubic feet per second (cfs) of water from the underground waters of the Imlay Area Groundwater Basin, Pershing County, Nevada, for mining purposes within Sections 3, 5, 8, 9, 15, 16, 17, 19, 21, 22, 27, 28, 29, 31 and 33, T.32N., R.32E., M.D.B. & M.<sup>1</sup> The point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 15.

II.

Application 49599 was filed on December 20, 1985, by Southern Pacific Land Company to appropriate 2.0 cubic feet per second (cfs) of water from the underground waters of the Imlay Area Groundwater Basin, Pershing County, Nevada, for mining purposes within Sections 8, 9, 15, 16, 17, 19, 21, 22, and 28, T.32N., R.32E., M.D.B. & M.<sup>2</sup> The point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 17.

III.

Application 49600 was filed on December 20, 1985, by Southern Pacific Land Company to appropriate 2.0 cubic feet per second (cfs) of water from the underground waters of the Imlay Area Groundwater Basin, Pershing County, Nevada, for mining purposes within Sections 8, 9, 15, 16, 17, 19, 21, 22, 28, 31 and 33, T.32N., R.32E.,

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<sup>1</sup> File No. 49598, official records of the Office of the State Engineer.

<sup>2</sup> File No. 49599, official records of the Office of the State Engineer.

M.D.B. & M.<sup>3</sup> The point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29, T.32N., R.32E., M.D.B. & M.

IV.

Applications 49598 and 49599 were timely protested by Buck and Charley Mines Corp. on the following grounds:

Buck & Charley Mines Corp., has had the continuous use for over fifty years of the waters applied for and same are the only source of potable water for the watchman's and miners' cabins at protestant's mine in Rochester Canyon.<sup>1,2</sup>

Applications 49598, 49599 and 49600 were timely protested by the Pershing County Water Conservation District on the grounds that the granting of the application would effect the water table and drainage, and would adversely effect the decreed waters of the Humboldt River.<sup>1, 2, 3</sup>

V.

Application 53297 was filed on May 24, 1989, by Southern Pacific Land Company to appropriate 2.0 cubic feet per second (cfs) of water from the underground waters of the Imlay Area Groundwater Basin, Pershing County, Nevada, for mining purposes within Sections 8, 9, 15, 16, 17, 19, 21, and 22, T.32N., R.32E., M.D.B. & M.<sup>4</sup> The point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29, T.32N., R.32E., M.D.B. & M.

VI.

Application 53297 was timely protested by Ed Speir Dusty Mine on the basis that the well under Application 53297 would be drilled below his wells and the possibility existed that the applicant's well would drain his wells.<sup>4</sup>

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<sup>3</sup> File No. 49600, official records of the Office of the State Engineer.

<sup>4</sup> File No. 53297, official records of the Office of the State Engineer.

VII.

Application 53298 was filed on May 24, 1989, by Southern Pacific Land Company to appropriate 2.0 cubic feet per second (cfs) of water from the underground waters of the Imlay Area Groundwater Basin, Pershing County, Nevada, for mining purposes within Sections 8, 9, 15, 16, 17, 19, 21, 22, and 28, T.32N., R.32E., M.D.B. & M.<sup>5</sup> The point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29, T.32N., R.32E., M.D.B. & M.

VIII.

Application 53298 was timely protested by Ed Speir on the grounds that "Sec. 20 already in production, already have wells for Sec. 20 and 30."<sup>5</sup>

IX.

Application 53299 was filed on May 24, 1989, by Southern Pacific Land Company to appropriate 2.0 cubic feet per second (cfs) of water from the underground waters of the Imlay Area Groundwater Basin, Pershing County, Nevada, for mining purposes within Sections 8, 9, 15, 16, 17, 19, 21, 22, and 28, T.32N., R.32E., M.D.B. & M.<sup>6</sup> The point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29, T.32N., R.32E., M.D.B. & M.

X.

Application 53299 was timely protested by Ed Speir Dusty Mine on the basis that the well under Application 53299 would be drilled below his wells and the possibility existed that the applicant's well would drain his wells.<sup>6</sup>

XI.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held with regard to the

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<sup>5</sup> File No. 53298, official records of the Office of the State Engineer.

<sup>6</sup> File No. 53299, official records of the Office of the State Engineer.

protested applications on October 17, 1995, at Lovelock, Nevada, before representatives of the Office of the State Engineer.<sup>7</sup>

FINDINGS OF FACT

I.

The State Engineer finds that no appearance was made by the applicant or protestant Buck and Charley Mines at the administrative hearing held on October 17, 1995.<sup>8</sup>

II.

The State Engineer finds if a party fails to appear at a scheduled protest hearing the State Engineer will hear the evidence of the witnesses who have appeared and will proceed to consider the matter and dispose of it on the basis of the evidence presented.<sup>9</sup>

III.

At the administrative hearing, Ron Speir testified on behalf of Ed Speir Dusty Mine that there were existing water rights in the area and he believed that the wells requested under the applications would dry up their wells putting their mining operation out of production.<sup>10</sup> The applicant, making no appearance, did not provide any evidence to the contrary. The State Engineer finds that the applicant's failure to appear or provide evidence to refute the protestant's claims implies that the applicant no longer has an interest in the project.

IV.

Ben Hodges testified at the administrative hearing on behalf of the Pershing County Water Conservation District stating it was

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<sup>7</sup> Transcript, public administrative hearing before the State Engineer, October 17, 1995.

<sup>8</sup> Transcript, p. 2, public administrative hearing before the State Engineer, October 17, 1995.

<sup>9</sup> NAC 533.330.

<sup>10</sup> Transcript, p. 7-8, public administrative hearing before the State Engineer, October 17, 1995.

his belief that the applications would adversely affect decreed Humboldt River water rights, and that Applications 49598, 49599 and 49600 would interfere with existing rights on the Humboldt River.<sup>11</sup> The State Engineer finds that the applicant's failure to appear or provide evidence to refute the protestant's claims implies that the applicant no longer has an interest in the project.

V.

By letter dated July 11, 1989, the State Engineer informed the applicant that before any further consideration could be given to Applications 53297 through 53299 the applicant needed to provide additional justification data and information concerning the annual consumptive use of the water under the purposes proposed in the applications. The State Engineer finds that no response was received by the State Engineer to the letter requesting additional information.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>12</sup>

II.

Before either approving or rejecting an application, the State Engineer may require such additional information from the current owner of record as will enable him to properly guard the public interest.<sup>13</sup>

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>14</sup>

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<sup>11</sup> Transcript, p. 14, public administrative hearing before the State Engineer, October 17, 1995.

<sup>12</sup> NRS Chapters 533 and 534.

<sup>13</sup> NRS 533.375.

<sup>14</sup> NRS Chapter 533.370(3)

- 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.

IV.

The State Engineer is further prohibited by law from granting a permit when the applicant has failed to provide satisfactory proof of his intention and good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence.<sup>15</sup>

V.

The State Engineer concludes that the applicant's failure to appear and challenge the protests is a recognition of the merits of the protestants' claims.

VI.

The applicant has failed to submit the information requested to the State Engineer's Office with regard to Applications 53297 through 53299. The State Engineer concludes that without the additional data sufficient information is not available to properly guard the public interest.

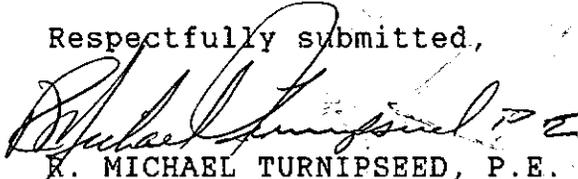
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<sup>15</sup> NRS 533.370(1)(c)(1).

RULING

Applications 49598, 49599 and 49600 are hereby denied on the grounds that the applicant failed to supply satisfactory proof of an intention to construct the works and put the water to beneficial use. Applications 53297, 53298 and 53299 are hereby denied on the additional 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 application would be detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJT/ab

Dated this 29th day of  
February, 1996.