

IN THE OFFICE OF STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATIONS 54381)
AND 54382 FILED TO APPROPRIATE)
EFFLUENT WATER WITHIN THE FERNLEY)
AREA (076) AND DODGE FLAT (082))
GROUNDWATER BASINS, RESPECTIVELY,)
LYON COUNTY AND WASHOE COUNTY,)
NEVADA.)

RULING

4722

GENERAL

I.

Application 54381 was filed on January 29, 1990, by the Town of Fernley to appropriate 13.8 cubic feet per second (cfs), not to exceed 10,000 acre-feet annually (afa), of effluent water for municipal purposes within a place of use which is described as all land and property within that part of Lyon County lying north of the east/west township line between Township 18 North and Township 19 North, M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 3, T.20N., R.25E., M.D.B.&M.¹

II.

Application 54382 was filed on January 29, 1990, by the Town of Fernley to appropriate 13.8 cfs, not to exceed 10,000 afa, of effluent water for a manner and place of use identical to those described under Application 54381. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 24, T.21N., R.23E., M.D.B.&M. Application 54382 contains

¹ File No. 54381, official records in the office of the State Engineer.

similar information as found in the remarks section under Application 54381.²

III.

The remarks section of both applications indicate that the Town of Fernley will divert treated effluent from the proposed Reno/Sparks Wetlands Project outlet works and pipe it to an infiltration basin to recharge the Fernley Groundwater Basin and that the purpose of the applications is to acquire primary permits pursuant to NRS 533.440(3).^{1,2}

IV.

Applications 54381 and 54382 were timely protested by the Nevada Department of Wildlife, the Cities of Reno and Sparks, Westpac Utilities and the Pyramid Lake Paiute Tribe on several grounds.^{1,2}

FINDINGS OF FACT

I.

Applications 54381 and 54382 were filed in the office of the State Engineer on January 29, 1990.^{1,2} The State Engineer finds that more than nine years have passed since the applications were filed and that the applicant has had sufficient time to formulate plans for placing the requested water to a beneficial use.

II.

By letter dated December 31, 1998, the applicant and its agent were advised that before further action could be taken on the subject applications, responses to the following questions would have to be submitted to the office of the State Engineer.^{1,2}

1. Define the Reno/Sparks Wetlands Project in general terms including the names of the governmental

² File No. 54382, official records in the office of the State Engineer.

entities that are involved in its development and eventual operation.

2. What is the current status of this project?
3. What engineering studies have been performed on the Town of Fernley's behalf to determine the feasibility of utilizing the waters of the project for municipal use as described on the subject applications?
4. Information contained within Applications 54381 and 54382 indicates that they were filed to acquire a primary water right permit for effluent water under the provisions of NRS 533.440(3). This statute requires that an agreement be in effect between the water treatment plant owner and the effluent appropriator. Please provide a copy of this agreement as it pertains to the subject applications, or information on the status of any ongoing negotiations with the treatment plant owner to obtain one.

The State Engineer finds that the requested information is required to enable him to gain a full and complete understanding of the applications before him and the applicant's ability to place the water to beneficial use.

III.

The Town of Fernley and its agent were requested by certified letter dated December 31, 1998, to provide the State Engineer with the additional information within 30 days from the date of the letter. Both parties were also cautioned that failure to timely respond to this request would result in the denial of Applications 54381 and 54382. Properly endorsed receipts for the certified

mailings were received from the applicant and its agent.^{1,2} To this date, no information in this matter has been submitted to the office of the State Engineer. The State Engineer finds that the applicant and its agent were properly noticed of the need to provide additional information to the State Engineer, but have failed to do so, therefore, the subject applications may be considered for denial.

IV.

Applications 54381 and 54382 request an appropriation of effluent water which originates from the Reno/Sparks waste water treatment facility. Under the provisions of NRS § 533.440 the appropriation of effluent water for a beneficial use can only occur if an agreement is in effect between the treatment facility owner and the applicant for a permanent and sufficient interest in such reservoir to impound enough water for the purpose set forth in the application. The applicant was requested pursuant to the December 31, 1998, letter to provide the State Engineer with evidence that such an agreement was either being negotiated or was in effect, but has failed to do so.^{1,2} The State Engineer finds that the applicant did not provide the required agreement and any indication that negotiations for such an agreement were taking place.

CONCLUSIONS

I.

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

³ NRS Chapter 533.

II.

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

- 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. The State Engineer concludes that the applicant has failed to provide sufficient information to adequately guard the public interest and that the subject applications must be denied.

IV.

Before an application which requests an appropriation of effluent water can be considered for approval an agreement must be entered into with the owner of the reservoir for a permanent and sufficient interest in such reservoir to impound enough water for the purpose set forth in the application. The Town of Fernley has failed to provide the State Engineer with evidence of such an agreement. The State Engineer concludes that it would not be in the public interest to approve an application which requests an

⁴ NRS § 533.370(3).

Ruling

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appropriation of effluent water which does not meet the criteria established under NRS § 533.440.

RULING

Applications 54381 and 54382 are hereby denied on the grounds that the granting of these applications would not be in the public interest. No ruling is made regarding the merits of the protests.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/cl

Dated this 31st day of
March, 1999.