

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

IN THE MATTER OF APPLICATION 26325-S5)
TO APPROPRIATE THE PUBLIC WATERS OF)
THE STATE OF NEVADA FROM EFFLUENT)
WITHIN THE CARSON VALLEY HYDROGRAPHIC)
BASIN (105), DOUGLAS COUNTY, NEVADA.)

RULING

4967

GENERAL

I.

Application 26325-S5 was filed on January 23, 1990, by John S. Shahin to appropriate 3.0 cubic feet per second (cfs) of effluent from January 1st to December 31st from the Douglas County Sanitation Improvement District #1 (DCSID #1) for the irrigation of a golf course located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12; SE $\frac{1}{4}$ NW $\frac{1}{4}$, and a portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13; NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 14; NW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, a portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 23; NW $\frac{1}{4}$ of Section 24; SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, a portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, a portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26; all in T.13N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T.13N., R.18E., M.D.B.&M. Ownership of Application 26325-S5 was assigned to Bently Family Limited Partnership in the records of the State Engineer on July 14, 1998.¹

II.

Application 26325-S5 was timely protested on February 23, 1990, by James B. Martin, District Manager of the Douglas County Sewer District No. 1 on the following grounds:

That "discharges of treated effluent by DCSID #1 are regulated by the EPA National Pollution Discharge Elimination System (NPDES). The current NPDES permit number NEV 8003 3 issued by the Nevada Division of Environmental Protection for the EPA in 1984 precludes the discharge of effluent other than to lands described in the permit, namely the Settelmeyer ranch" and

¹ File No. 26325-S5, official records in the office of the State Engineer.

"discharge of effluent to any other area would be a violation of state and federal statutes" and "the proposed use of treated effluent may result in adverse public health concerns due to the effluent being non-potable".¹

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.440(2) provides that when a secondary application is filed to beneficially use water from a reservoir, "the application... shall show by documentary evidence that an agreement has been 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 State Engineer finds that neither Mr. Shahin nor the Bently Family Limited Partnership have presented the State Engineer with any documentary evidence of an agreement between either party and Douglas County Sewer District No. 1 to comply with the provisions of NRS 533.440(2).

II.

The State Engineer finds that the proposed place of use under Application 26325-S5 is not within the place of use authorized by Nevada Division of Environmental Protection Permit NEV80033 for discharge. The Division of Environmental Protection's Authorization to Discharge, Permit NEV80033 dated June 25, 1998, authorizes the discharge of effluent at the following sites: the Settelmeyer Ranch, the Dangberg Ranch and the Buckeye Creek Effluent Storage Facility.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

¹ NRS § 533.370(3).

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:²

- 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.

Under the provisions of NRS § 533.440(2), before an application that requests the secondary use of effluent water can be considered for approval, an agreement must be in effect between the secondary user and the holder of the primary water right. The original applicant and his successor in interest have failed to provide evidence of such an agreement being in effect; therefore, the State Engineer concludes that the approval of Application 26325-S5 would violate the provision of NRS 533.440(2); therefore, threatening to prove detrimental to the public interest.

IV.

The proposed place of use described under Application 26325-S5 is not included within the place of use described under the Nevada Division of Environmental Protection's discharge permit. The State Engineer concludes that it would threaten to prove detrimental to the public interest to approve an application for secondary use of effluent water upon a proposed place of use which is not within the permitted place of use authorized by a state regulatory agency.

RULING

The protest to Application 26325-S5 is hereby upheld in part and Application 26325-S5 is denied on the grounds that the granting of the application would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/SJB/cl

Dated this 28th day of
September, 2000.