

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

IN THE MATTER OF APPLICATIONS)
62704, 62705 AND 62706 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE IMLAY)
AREA HYDROGRAPHIC BASIN (072),)
PERSHING COUNTY, NEVADA.)

RULING

5148

GENERAL

I.

Application 62704 was filed on December 31, 1996, by Cecil M. Turley to appropriate 1.23 cubic feet per second (cfs) of water from an underground source for quasi-municipal purposes. The proposed place of use is described as being within the E $\frac{1}{2}$ of Section 6 lying south of the Pitt-Taylor diversion canal, the S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ and that portion of the S $\frac{1}{2}$ of Section 7 lying north of the Southern Pacific Railroad, all within T.32N., R.34E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 7.¹

II.

Application 62705 was filed on December 31, 1996, by Cecil M. Turley to appropriate 1.23 cfs of water from an underground source for quasi-municipal purposes. The proposed place of use is described as being within the E $\frac{1}{2}$ of Section 6 lying south of the Pitt-Taylor diversion canal, the S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ and that portion of the S $\frac{1}{2}$ of Section 7 lying north of the Southern Pacific Railroad, all within T.32N., R.34E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 7.²

¹ File Number 62704, official records in the Office of the State Engineer.

² File Number 62705, official records in the Office of the State Engineer.

III.

Application 62706 was filed on December 31, 1996, by Cecil M. Turley to appropriate 1.23 cfs of water from an underground source for quasi-municipal purposes. The proposed place of use is described as being within the E½ of Section 6 lying south of the Pitt-Taylor diversion canal, the S½ NW¼, NE¼ and that portion of the S½ of Section 7 lying north of the Southern Pacific Railroad, all within T.32N., R.34E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SW¼ of said Section 7.³

IV.

Information contained within the remarks section of each application indicates that these applications were filed to provide a municipal water source for a proposed 300-unit mobile home subdivision, a 791-unit housing subdivision, a 143-unit industrial park in addition to 20 acres of commercial/municipal land. The applicant estimated that the annual consumptive use from each well would be 300 acre feet for Applications 62704 and 62705 and 250 acre feet for Application 62706.^{1, 2,3}

V.

The Pershing County Water Conservation District timely protested Applications 62704, 62705 and 62706 on the following grounds.^{1, 2,3}

That the granting of said applications will effect the water table and drainage and adversely effect the decreed waters of the Humboldt River. Also, said applications are in Basin #72 which is over appropriated.

FINDINGS OF FACT

I.

The State Engineer approves a water right permit with the assumption that there is a reasonable expectation that the water

³ File Number 62706, official records in the Office of the State Engineer.

appropriated under the permit will be placed to its intended beneficial use. At the time of the filing, it was the applicant's intention to develop an extensive commercial project that would exceed 1,000 residences. The applicant estimated that it would take five years to place the water requested under Applications 62704, 62705 and 62706 to its full beneficial use.^{1, 2,3} If the size of this project is compared to the relatively short time projected for build out, it becomes apparent that a sizeable commitment of financial resources and effort will be required. The applicant's ability to fund this project will determine to a large degree whether the water requested for appropriation will be timely perfected. Under the provisions established under NRS § 533.375, the State Engineer may require a showing of facts that will enable him to determine whether the applicant has the financial ability to carry out the proposed work. In this instance, the State Engineer finds that before additional consideration can be given to the approval of the subject application, the applicant must provide evidence that sufficient financial resources exist to support the proposed development.

II.

Accordingly, by letter dated June 2, 1997, the applicant was requested by the Office of the State Engineer to furnish the State Engineer with satisfactory proof of his intention in good faith to construct the work necessary to apply the water to its intended beneficial use. The applicant was asked to submit any approvals received for the project, in addition to any master plan or tentative subdivision maps that had been prepared. A projected schedule and market analysis was also requested, as was a confirmation of the zoning classification for the proposed place of use. The applicant was also advised that it would be necessary to provide proof of his financial ability to develop the water to a point where full beneficial use could be attained within his estimate of five years. This request for additional information

carried with it the condition the applications would be held in abeyance until an acceptable response to the letter had been received.¹

A reply to this letter was received in the Office of the State Engineer, which was essentially a request for additional time to fulfill the requirements set forth in the June 2, 1997, letter. The Office of the State Engineer granted this request, with the deadline for a suitable response eventually extended to February 1, 1998. This extension of the deadline failed to precipitate a response from the applicant.

A second request for information was sent by certified mail to the applicant and his agent on January 9, 2002. This letter also advised the applicant that a failure to submit a proper written response within sixty days would result in the denial of the permits. The certified letter sent to the applicant was returned to the Office of the State Engineer stamped "Not Deliverable As Addressed, Unable to Forward", by the United States Postal Service. A second letter, which was sent via regular mail, was also returned bearing a similar notation.¹ The problems experienced in contacting the applicant can be attributed to a failure on his part to maintain a current valid mailing address with the Office of the State Engineer. Despite the fact that both letters to the applicant were returned, the State Engineer finds that the correct noticing procedure was followed utilizing the applicant's address of record.

III.

On two separate occasions the applicant was requested by the Office of the State Engineer to provide additional information relating to any continued interest he may retain in completing the project associated with the subject applications. The most recent request was made with the understanding that a failure to respond would result in the denial of Applications 62704, 62705 and 62706.¹ The State Engineer finds after an examination of the

records of his office, that no further correspondence has been received from the applicant for a period in excess of 1.5 years, and that this prolonged period of silence represents a lack of good faith in maintaining an active interest in pursuing the subject applications. The State Engineer further finds that the applicant has failed to provide any evidence of his financial ability to perfect the water requested for appropriation.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

- 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 been requested on two occasions to provide the State Engineer with additional information relating to Applications 62704, 62705 and 62706. These requests were made with the understanding that a failure to respond in a timely manner would represent a lack of interest on the applicant's part in pursuing the subject applications. To this date, no response regarding this matter has been received in the Office of the State Engineer. The State Engineer concludes that the approval of

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.370(3).

Ruling
Page 6

applications that the applicant has no interest in pursuing, would threaten to prove detrimental to the public interest.

RULING

Applications 62704, 62705, and 62706 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MDB/jm

Dated this 27th day of
August, 2002.