

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

IN THE MATTER OF APPLICATIONS 59543 )  
THROUGH 59576, INCLUSIVE, FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF AN )  
UNDERGROUND SOURCE WITHIN THE )  
LEMMON VALLEY HYDROGRAPHIC BASIN )  
(92A), WASHOE COUNTY, NEVADA. )

RULING

**#5567**

GENERAL

I.

The records of the Office of the State Engineer contain thirty-four water right applications that were filed on December 1, 1993, to appropriate large quantities of underground water from the Lemmon Valley Hydrographic Basin. A brief summation of these applications is as follows:<sup>1</sup>

Application 59543 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cubic feet per second (cfs), with a duty of water not to exceed 2,172 acre-feet annually (afa). The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NW¼ NE¼ of Section 24, T.20N., R.18E., M.D.B.&M.

Application 59544 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the

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<sup>1</sup> File Nos. 59543 through 59576, inclusive, official records in the Office of the State Engineer.

State Engineer. The proposed point of diversion is described as being within the NW¼ NE¼ of Section 24, T.20N., R.18E., M.D.B.&M.

Application 59545 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NE¼ NE¼ of Section 24, T.20N., R.18E., M.D.B.&M.

Application 59546 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NE¼ NE¼ of Section 24, T.20N., R.18E., M.D.B.&M.

Application 59547 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NW¼ NE¼ of Section 24, T.20N., R.18E., M.D.B.&M.

Application 59548 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NW¼ NE¼ of Section 24, T.20N., R.18E., M.D.B.&M.

Application 59549 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NE¼ NE¼ of Section 24, T.20N., R.18E., M.D.B.&M.

Application 59550 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NE¼ NE¼ of Section 24, T.20N., R.18E., M.D.B.&M.

Application 59551 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SW¼ SE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59552 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SW¼ SE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59553 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59554 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59555 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59556 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59557 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SE¼ SE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59558 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SE¼ SE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59559 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SE¼ SE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59560 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NE¼ SE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59561 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NE¼ SE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59562 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NE¼ SE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59563 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SE¼ NE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59564 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SE¼ NE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59565 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SE¼ NE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59566 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SE¼ NE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59567 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NE¼ NE¼ of Section 13, T.20N., R.18E., M.D.B.&M.

Application 59568 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NW¼ NW¼ of Section 18, T.20N., R.19E., M.D.B.&M.

Application 59569 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NW¼ NW¼ of Section 18, T.20N., R.19E., M.D.B.&M.

Application 59570 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NW¼ NW¼ of Section 18, T.20N., R.19E., M.D.B.&M.

Application 59571 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SW¼ SW¼ of Section 7, T.20N., R.19E., M.D.B.&M.

Application 59572 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SW¼ SW¼ of Section 7, T.20N., R.19E., M.D.B.&M.

Application 59573 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SW¼ SW¼ of Section 7, T.20N., R.19E., M.D.B.&M.

Application 59574 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the SW¼ SW¼ of Section 7, T.20N., R.19E., M.D.B.&M.

Application 59575 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NW¼ SW¼ of Section 7, T.20N., R.19E., M.D.B.&M.

Application 59576 was filed by Westpac Utilities on December 1, 1993, to appropriate 3.0 cfs, with a duty of water not to exceed 2,172 afa. The proposed manner and place of use is described on the application as being for municipal and domestic purposes within the certificated service area of Westpac Utilities, as depicted upon maps on file within the records of the State Engineer. The proposed point of diversion is described as being within the NW¼ SW¼ of Section 7, T.20N., R.19E., M.D.B.&M.

II.

Applications 59543 through 59576 were timely protested by several different parties, for a variety of reasons.<sup>1</sup> Several other parties filed protests past the filing deadline, which resulted in the protests being classified as "informal". A listing of protestants and the original protests received from each one can be found in the appropriate water right application files.

FINDINGS OF FACT

I.

When considering protested water right applications, the State Engineer has the option of conducting an administrative hearing to obtain evidence and testimony relating to the applications and the associated protest issues. Once a written record has been developed from the hearing, it can be reviewed and used to supplement the existing record on file in the Office of the State Engineer.<sup>2</sup> As it will be developed in this ruling, the applicant and protestants were offered early in 2005, the opportunity to present new information at a public hearing, but did not pursue this option. The State Engineer finds that there is no need to propose an additional hearing in this matter.

II.

Once a water right application has been filed in the Office of the State Engineer it is assigned a serial number under which a file is created. As the application advances through the State Engineer's permitting process, its progress can be traced through the information contained within its water right file. If the record of information specific to Applications 59543 through 59576 is examined, it can be seen that each of the applications passed through the initial application review and publication periods. In accordance with the statutory provisions, a legal notice, describing each application was published in the correct newspaper

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<sup>2</sup> NRS § 533.365(3).

for the prescribed period of time. As previously noted in this ruling, four formal protests were filed in opposition to each of the subject applications. Once a written protest has been filed and accepted in the Office of the State Engineer, no further action can be taken on the application until the protest is either withdrawn or resolved. By a series of letters sent during 1994, the applicant was notified by certified mail that the applications had been protested. These letters, the last of which was sent to the applicant on August 19, 1994, mark the beginning of an eleven-year period of inactivity, during which no significant written information was received from the applicant or the protestants. The exception being a June 28, 1991, letter that was received from the Truckee Meadows Water Authority (TMWA). This letter advised the Office of the State Engineer that TMWA had acquired all of the assets and water rights formally owned by Sierra Pacific Power Company, which was the parent company of Westpac Utilities. The letter also requested that all subsequent correspondence regarding Sierra Pacific Power Company's municipal water rights be sent to the address stated within the letter. No specific mention was made regarding any of the subject water right applications or any progress that had been made in developing the proposed project.<sup>1</sup> The State Engineer finds that the lack of correspondence between 1995 and 2005 represents a failure on the part of Westpac Utilities to demonstrate a continued interest in the water right applications.

### III.

The lack of correspondence is not limited to the applicant or its successor, and extends to the protestants as well. It was not until February 2005, that letters began arriving in the State Engineer's office from the protestants. The event that precipitated this sudden interest was a January 31, 2005, letter from the Office of the State Engineer. The intent of this letter was to initiate a dialogue between the State Engineer's office and the involved parties that would ultimately lead to the scheduling

of a public hearing in the matter of the subject applications and their associated protests. The letter also cautioned the applicant that the failure to submit a timely written response would result in the denial of the applications. While a response was not received from the applicant, a note placed in the application file maintained under Application 59543, states that TMWA did not own any of the applications in question and would not pursue them.<sup>1</sup>

This statement would have ended the matter, and led to a simple written denial or voluntary withdrawal of the applications by TMWA. However, the ownership records of the Office of the State Engineer indicates that Westpac Utilities still retains title to Applications 59543 through 59576. Without a formal transfer of title to TMWA, the State Engineer finds that all questions regarding future plans for the subject applications must be addressed by Westpac Utilities.

#### IV.

Having determined that Westpac Utilities remained the owner of record, an effort was made to establish contact with them through the postal service. Accordingly, by letter dated May 25, 2005, Westpac Utilities was directed by the Office of the State Engineer to provide written evidence of a continued interest in Applications 59543 through 59576 within thirty days from the date of the letter. The applicant was also advised that the failure to submit a response in a timely manner would result in denial of the applications. On June 10, 2005, the certified letter to the applicant was returned to the State Engineer's office stamped, "Attempted-Not Known", by the United States Postal Service.<sup>1</sup> The State Engineer finds that the applicant has been properly notified at its address of record of the need to provide additional information and has failed to do so; therefore, the subject applications can be considered for denial.

### CONCLUSIONS

#### I.

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

#### II.

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.<sup>4</sup>

#### III.

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

- 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.

#### IV.

The applicant was properly noticed of the requirement for additional information regarding the applications and has failed to provide this information to the State Engineer's office. The State Engineer concludes that the failure to submit the requested information and the failure to express any interest in these applications over the last eleven years demonstrates the applicant's lack of interest in pursuing the subject applications. The State Engineer concludes that it would threaten to prove detrimental to the public interest to issue permits under these circumstances.

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<sup>3</sup> NRS chapters 533 and 534.

<sup>4</sup> NRS § 533.375.

<sup>5</sup> NRS § 533.370(4).

RULING

Applications 59543, 59544, 59545, 59546, 59547, 59548, 59549, 59550, 59551, 59552, 59553, 59554, 59555, 59556, 59557, 59558, 59559, 59560, 59561, 59562, 59563, 59564, 59565, 59566, 59567, 59568, 59569, 59570, 59571, 59572, 59573, 59574, 59575 and 59576 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 protests.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/MB/jm

Dated this 27th day of  
February, 2006.