

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

IN THE MATTER OF APPLICATIONS )  
68179, 68180 AND 68181 FILED TO )  
APPROPRIATE THE WATERS OF )  
AN UNDERGROUND SOURCE )  
WITHIN THE INDEPENDENCE )  
VALLEY HYDROGRAPHIC BASIN )  
(188), ELKO COUNTY, NEVADA. )

**RULING**

**#5427**

**GENERAL**

**I.**

Application 68179 was filed on November 7, 2001, by Nevada Land & Resource Company, L.L.C. to appropriate 5.0 cubic feet per second (cfs) of underground water for industrial purposes within Section 25, T.37N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 25, T.37N., R.64E., M.D.B.&M.<sup>1</sup>

**II.**

Application 68180 was filed on November 7, 2001, by Nevada Land & Resource Company, L.L.C. to appropriate 5.0 cfs of underground water for industrial purposes within Section 25, T.37N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 25, T.37N., R.64E., M.D.B.&M.<sup>2</sup>

**III.**

Application 68181 was filed on November 7, 2001, by Nevada Land & Resource Company, L.L.C. to appropriate 5.0 cfs of underground water for industrial purposes within Section 19, T.37N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 19, T.37N., R.65E., M.D.B.&M.<sup>3</sup>

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<sup>1</sup> File No. 68179, official records in the Office of the State Engineer.

<sup>2</sup> File No. 68180, official records in the Office of the State Engineer.

<sup>3</sup> File No. 68181, official records in the Office of the State Engineer.

#### IV.

The remarks section of each of the subject applications indicates that they were filed to provide water for a proposed power plant and related uses not to exceed 3,000 acre-feet annually within the Independence Valley Hydrographic Basin.<sup>1,2,3</sup>

#### FINDINGS OF FACT

##### I.

Before a water right application can be considered for approval, there must be a reasonable certainty that the water it requests will ultimately be placed to its intended beneficial use. A valuable tool in assisting the State Engineer in this determination is provided by the NRS §§ 533.370 and 533.375. The provisions found under NRS § 533.370 authorizes the State Engineer to request additional information from a water right applicant regarding his intention in good faith to construct the works necessary to perfect the water right. This section of the Nevada water law also empowers the State Engineer to obtain proof from the applicant of his financial ability to actually construct the project and apply the water to beneficial use with reasonable diligence.

In addition, the State Engineer is authorized under NRS § 533.375 to request additional information as will enable him to guard the public interest properly.

If the subject applications are examined, it becomes evident that the 9,000 acre-feet annually of underground water that they seek, represents an amount, which exceeds the sum of all active permits and certificates currently approved for the Independence Valley Hydrographic Basin. The magnitude of this request and the complexity and expense of the project creates a great concern on the State Engineer's part regarding the applicant's ability to initiate, develop and complete it. Under these circumstances the State Engineer finds that additional information must be obtained from the applicant to gain a full understanding of the water right applications and the power project they support.

##### II.

The State Engineer's need for additional information was expressed in his letter to the Nevada Land & Resources, L.L.C. dated, February 19, 2004. The main focus of this letter was the question "...is this still a viable project and have you begun the process of acquiring the site and all the other requirements necessary to construct the facility?" This

question relates back to the issue of a reasonable expectation to place the water requested for appropriation to its intended beneficial use. The State Engineer also advised the applicant that an initial response to his letter was expected within thirty days from the date of the letter. If this information proved satisfactory, the State Engineer advised the applicant that additional time would be allowed to supply more detailed documentation to demonstrate the degree of progress that had been made in fulfilling the necessary regulatory requirements associated with construction of a power plant within Independence Valley. The State Engineer finds that once the additional information is received, reviewed and incorporated into the existing record, a decision can be made regarding the route these applications will take in the permitting process.

### III.

By letter dated March 17, 2004, the applicant responded to the State Engineer's request for additional information. This written response, which slightly exceeds one page, consisted primarily of brief general references to Nevada Land & Resource Company, L.L.C.'s company goals in rural Nevada and their development of the Toquop Power Project in Lincoln County. The applicant does identify the Independence Valley power plant as one of Nevada Land & Resource Company, L.L.C.'s proposed projects, but does not offer an assessment of how far the project has progressed during the thirty-one months that have passed since the initial filing of the subject applications. Absent from the letter is any information concerning site acquisition or progress achieved in the permitting process for this project. The State Engineer finds that his request for additional information failed to generate any substantial new information regarding the viability of the project envisioned under the subject applications.

### IV.

The State Engineer finds that the applicant did not adequately demonstrate that it has a viable project for the water requested for appropriation under the subject applications; therefore, there is not a reasonable expectation that this water will be placed to its intended beneficial use.

**CONCLUSIONS**

**I.**

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

**II.**

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water 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.

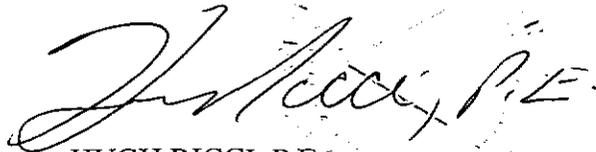
**III.**

The State Engineer concludes that the approval of water right applications for which there has been an inadequate demonstration of a reasonable expectation of placing the water requested to its intended beneficial use would threaten to prove detrimental to the public interest.

**RULING**

Applications 68179, 68180 and 68181 are hereby denied on the grounds their issuance would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/MB/jm

Dated this 14th day of  
October, 2004.

<sup>4</sup> NRS chapters 533 and 534.

<sup>5</sup> NRS § 533.370(4).