

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

IN THE MATTER OF APPLICATION 74556)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE IMLAY AREA HYDROGRAPHIC)
BASIN (72), PERSHING COUNTY, NEVADA.)

RULING

#6289

GENERAL

I.

Application 74556 was filed on July 24, 2006, by Nevada Land and Resource Company, LLC, later assigned to New Nevada Lands, LLC, to appropriate 5.0 cubic feet per second of underground water for industrial purposes. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T.32N., R.33E., M.D.B.&M. The proposed place of use is described as +/- 557.36 acres within portions of Sections 33 and 34, T.32N., R.33E., M.D.B.&M. The remarks section of the application indicates that the water will be used by a geothermal power facility for power generation, and that the annual consumptive use is 500 acre-feet.¹

II.

Application 74556 was timely protested by the Pershing County Water Conservation District of Nevada on the following grounds:¹

That the granting of said application will effect [sic] the water table and drainage and adversely effect [sic] the decreed waters of the Humboldt River. Also, said Application is for basin #72 which is currently over appropriated.

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.365(4) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the state of Nevada. The State

¹ File No. 74556, official records in the Office of the State Engineer.

Engineer finds that there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on Application 74556 is not required.

II.

Nevada Revised Statutes §§ 533.370(1)(c) and 533.375(1) allow the State Engineer to request additional information concerning an application, including proof of the applicant's good faith intention and financial ability to construct the works, and information to enable the State Engineer to properly guard the public interest. In a certified letter dated August 31, 2012, the State Engineer requested detailed technical information concerning the proposed project, which required that the Applicant:

1. Provide a map showing the location of the power plant, pipelines, power lines and any other facilities associated with your proposed project.
2. Describe the type and size of proposed power plant installation to be built and provide documentation verifying that you are ready to go forward with constructing the power plant facility. Include the generation capacity in megawatts and the estimated ratio of water use in terms of acre-feet of water per megawatt annually.
3. Describe the number of hours per day and days per year of plant operation during which water will be consumed.
4. Provide an accurate description of all plant components utilizing water along with the hourly/daily volume of water (i.e. gallons per hour or day) required for each component.
5. Identify the minimum total volume of water required for plant operation on a daily basis.
6. Identify the proposed total annual consumptive use, including plant losses, domestic and ancillary uses, reported in million gallons annually or acre-feet annually.
7. Provide a monitoring plan outline for measuring the potential impact of groundwater withdrawals with respect to existing rights, surface sources, and the groundwater aquifer.
8. Provide evidence of your financial ability to construct the power plant.

9. State the use to which the power is to be supplied. For example, is the power generated for a specific project or will the power be added to a new or existing power grid for distribution? Explain.
10. State whether any of the power generated will be delivered outside the state of Nevada.
11. Specify rights-of-way and /or easements, deeds, leases, or special use permits that show you have access to the lands described by the points of diversion and places of use.
12. Update this office on any other federal, state or local permits already obtained to construct and operate the proposed project.
13. Within the places of use, indicate the current zoning on the property(s) where development will occur. Is current zoning compatible with the type of use planned?
14. If the Applicant does not intend to place the water to beneficial use, provide any evidence of contractual relationships with any entities that will ultimately place the water to beneficial use. If the Applicant does intend to place the water to beneficial use, provide evidence of your ability to do so.
15. The applicant must show his intention in good faith to construct any work necessary to apply water to the intended beneficial use with reasonable diligence. In this regard, please discuss any previous projects or any other experience that demonstrate your knowledge and skill in developing this type of project.
16. Application 74556 has been protested. Provide any information regarding the resolution of this protest.

The State Engineer finds that the requested information is required to enable him to gain a complete understanding of Application 74556 and the Applicant's ability to place the requested water to a beneficial use.

III.

The State Engineer's letter requested a response within 60 days and warned that a failure to timely respond could result in the denial of Application 74556. A response to the request for additional information was received by the Office of the State Engineer on September 19, 2012.

The Applicant's response stated, "[y]our letter inquires as to some of the specifics of the geothermal project; unfortunately, at the current state of development of the project, it is impossible to answer the specifics you request." Attached to the response were three exhibits:

1. Exhibit A - Copies of several deeds and leases between Nevada Land and Resources and New Nevada Lands;
2. Exhibit B - A Ratification of Lease document between New Nevada Lands and Presco Energy, LLC; and,
3. Exhibit C - A Worksheet Determination of EPA Adequacy (DNA).

After reviewing the Applicant's response and the exhibits, the State Engineer finds that the Applicant failed to respond to the State Engineer's request for additional information; therefore, Application 74556 is subject to denial.

CONCLUSIONS OF LAW

I.

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

II.

The State Engineer shall approve an application submitted in proper form which contemplates the application of water to beneficial use if the applicant provides proof satisfactory to the State Engineer of the applicant's intention in good faith to construct any work necessary, and the applicant's financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence.³

III.

The State Engineer concludes that when requested to do so, the Applicant failed to submit satisfactory proof to the State Engineer of the Applicant's good faith intention and financial ability to construct the work and apply the water to the intended beneficial use with reasonable diligence. Therefore, the State Engineer is prohibited by law from granting Application 74556.

² NRS Chapters 533 and 534.

³ NRS § 533.370(1)(c)(1), (2).

⁴ NRS § 533.370(2).

IV.

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 or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectable 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.

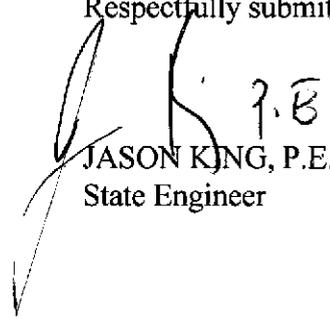
V.

The State Engineer concludes that when requested to do so, the Applicant has failed to provide sufficient information requested pursuant to NRS § 533.375(1) to adequately guard the public interest; therefore, the State Engineer is prohibited by law from granting Application 74556.

RULING

Application 74556 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 14th day of
August, 2014.

⁴ NRS § 533.370(2).