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

IN THE MATTER OF APPLICATION 77325 FILED TO APPROPRIATE THE PUBLIC WATERS OF AN UNDERGROUND SOURCE WITHIN THE BIG SMOKY VALLEY – NORTHERN PART HYDROGRAPHIC BASIN (137B), NYE COUNTY, NEVADA.	)	**RULING** **#6037**

GENERAL

I.

Application 77325 was filed on August 19, 2008, by Western Renewable Power, LLC, to appropriate 2.0 cubic feet per second, not to exceed 1,200 acre-feet annually, from an underground source within the Big Smoky Valley – Northern Part Hydrographic Basin, for industrial cooling purposes within the SE¼ SE¼ of Section 8, T.11N., R.43E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SW¼ of Section 9, T.11N., R.43E., M.D.B.&M.[1]

II.

Application 77325 was timely protested by the U.S. Department of Interior, Bureau of Land Management on grounds not addressed in this ruling.

FINDINGS OF FACT

I.

By certified letter dated May 5, 2009, the Office of the State Engineer informed the Applicant and Protestant that it was looking to take action on Application 77325. In this regard, the Applicant and Protestant were given 30 days to respond in writing as to whether the protest can be resolved without an administrative hearing. Both the Applicant and Protestant, via separate letters, requested that the State Engineer allow the parties an additional six months of time.[1]

By letter dated June 23, 2009, the State Engineer granted the request for additional time to December 4, 2009; however, the State Engineer also required additional

[1] File No. 77325, official records of the Office of the State Engineer.

information from the Applicant within the same time frame. The Applicant was to provide the State Engineer with specific information regarding the progress of its project including such information as; access to the proposed place of use, information on the other requirements that are necessary in order to construct a geothermal power plant and the status of completion of those requirements, and other project specifics and water use justifications as required by statute. To date, the Applicant has failed to provide the requested information within the time frame set forth.[1]

The State Engineer finds that the Applicant was properly notified of the request for additional information. The State Engineer finds there was no response from the Applicant or its agent to the notification from the State Engineer regarding Application 77325.

II.

On December 10, 2009, the Office of the State Engineer made inquiries to the Nevada Secretary of State's office, through their official website, regarding the corporate status of Western Renewable Power, LLC. A search of the corporate information database showed the corporate status of Western Renewable Power, LLC, as "Dissolved" and "Default", as a Domestic Limited-Liability Company and as a Foreign Limited-Liability Company, respectively.[1]

Nevada Revised Statute § 533.325 provides that only a "person" can file an application to appropriate water. In general usage, a "person" is defined to be a human being, firm, labor organization, partnership, association, corporation, legal representative, trustee, etc.[2] Nevada Revised Statute § 0.039 provides that except as otherwise expressly provided in a particular statute or required by the context, "person" means a natural person, any form of business or social organization, and any other non-governmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. The term does not include a government, governmental agency or political subdivision of a government. Nevada Revised Statute § 533.010 defines person as used in Chapter 533 to include the United States and the State of Nevada. Nevada Revised Statute § 534.014 defines person to

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[2] Black's Law Dictionary, 1028(5th ed. 1979).

include any municipal corporation, power district, political subdivision of this or any state, or an agency of the United States Government.

The State Engineer finds that the Applicant, Western Renewable Power, LLC, due to its current corporate status, is not a valid corporate entity in the state of Nevada; therefore, it is disqualified from obtaining a water right permit under Nevada water law.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[3]

II.

Before either approving or rejecting an application, the State Engineer may require such additional information from the applicant as will enable him to properly guard the public interest.[4]

III.

The State Engineer is prohibited by law from granting a permit under 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.

IV.

The Applicant has failed to submit the information requested to the Office of the State Engineer. The State Engineer concludes that without the additional data sufficient information is not available to properly guard the public interest. The State Engineer concludes that to grant a water right to an Applicant that does not express intent to go forward with the project would threaten to prove detrimental to the public interest.

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[3] NRS Chapters 533 and 534.
[4] NRS § 533.375.
[5] NRS § 533.370(5).

V.

The Applicant's corporate status is dissolved and defaulted as determined by the Nevada Secretary of State's office. On this basis, the State Engineer concludes the Applicant is ineligible to apply for a water right in the state of Nevada; therefore, to grant a water right permit under these circumstances would threaten to prove detrimental to the public interest.

RULING

Application 77325 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,

K. L. P.E.

TRACY TAYLOR, P.E.
for State Engineer

Dated this 24th day of
March, 2010.